The COMPENSATION ACT 1904.

WITH CRITICAL AND EXPLANATORY NOTES AND A REVIEW OF LICENSING LEGISLATION.

BY

FREDERICK MILLAR,

Of the Liberty and Property Defence League.

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AND

COMPENSATION.

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FREDERICK MILLAR

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PREFACE.

THE following pages embody an attempt to explain clearly, so that they may be understood by a person not learned in the law, the provisions of the Licensing Act, 1904. With a view to rendering the work more generally instructive, there has been included a short summary of the history of licensing and of the various matters leading up to the passing of the recent Act.

In addition to the works quoted, I have to acknowledge my indebtedness to the "Brewers' Almanack," and to the Reports of the Royal Commission on Liquor Licensing Laws, of which publications I have made considerable use.

F. M.

25 VICTORIA STREET,
WESTMINSTER, August, 1904.

A MANUAL

OF

LICENSING LEGISLATION

AND

COMPENSATION.

I.—Historical Sketch of the Licensing Laws.

THE wisdom of Lord Melbourne's famous remonstrance to legislative meddlers, "Damn it, why can't you leave it alone?" finds ample illustration in the history of the liquor laws of the United Kingdom, a history which consists of one long chapter exemplifying the futility and folly of State interference with private habits and trading customs, and which has resulted in creating what is admittedly the most complicated and vexatious system of regulation the world has ever seen.

For the beginnings of our present licensing laws we have to go back to the Act of 11 Henry VII. c. 2, passed in the year 1495, by which any two justices of the peace were empowered "to reject and put away common ale selling in towns and places where they should think convenient, and to take sureties of keepers of alehouses in their good behaving." A similar Act was passed in 1503, but the licensing system properly so-called dates from the 5 & 6 Ed. VI. c. 25 (1551-2). This Act confirmed the power of suppressing alehouses, and also enacted that no one should be allowed to keep an alehouse unless he obtained the authority of two justices of the peace. The justices were to take sureties for the observance of rules for the conduct of the houses, and were empowered to try breaches of those rules, and to punish persons keeping alehouses

without licence. It is to be noted that the licences granted under this Act were not terminable at any specified date, though the justices could suppress a house when they thought fit.

The sale of wine was first regulated in the following year by the Act 7 Ed. VI. c. 5, by which the retail sale was permitted in cities, boroughs, towns corporate, port towns, and market towns, and then only under appointment from the corporation, or, where there was no corporation, from the justices of the peace. The number of houses to be licensed was limited to 40 in the City of London, 8 in York, 6 in Bristol, 4 or 3 in eighteen other places, and 2 elsewhere. These licences were for the sale of wine to be consumed off the premises only, consumption on the premises being prohibited. This statute is worthy of note, not only as fixing the number of houses allowed, but also as being the earliest attempt to place the sale of liquors for consumption off the premises (which has usually been subject to an excise licence only) under the control of the justices. It seems, however, not to have been regularly enforced, and soon became obsolete.

The regulations drawn up by the justices under the Act of 5 & 6 Ed. VI. tended to acquire a more or less settled form, and the conditions commonly in use were embodied in a royal proclamation by James I. in 1618. This form provided that the alehouse-keeper should not during the continuance of his licence permit unlawful games to be played in his house, that he should close the house during the hours of divine service on Sunday, that he should give the names of all strangers staying in the house for more than a night to the constable, that he should not permit persons to continue drinking or tippling in his house, that he should close the house at nine in the evening, that he should not buy or take in pawn stolen goods nor harbour bad characters, that he should use standard measures and sell at the prices fixed by law, and that he should not sell tobacco nor permit smoking—this last being characteristic of the tobacco-hating James I.

During the reigns of James I. and Charles I. a series of Acts known as the Tippling Acts were passed, but as these are not

directly concerned with the law of licensing, we defer their consideration for a subsequent part of this work.

The first attempt to deal by legislation with the sale of spirits appears to have been made in the year 1700, when by the Act 12 & 13 Will. III. c. 11 persons retailing brandy or other distilled liquors to be drunk on the premises were required to obtain a licence in the same manner as alehouse keepers. This Act, however, appears to have had little effect, and the consumption of spirits, which was intended to be checked, continued nevertheless to increase. In 1728-9 the Act 2 Geo. II. c. 17 put a duty of 5/- a gallon on the manufacture of spirits in addition to the existing duties, and required all retailers to take out an annual excise licence on which a duty of £20 was payable. This Act was repealed four years afterwards by the Act 6 Geo. II. c. 17.

In 1729, by the Act 2 Geo. II. c. 28, the old system established under the Act of Edward VI., by which any two justices of the peace could grant licences, was abolished, and the system which has survived to the present day was substituted, by which licences can only be granted at a general meeting of the justices of the peace for the division where the applicant resides.

The Act of 9 Geo. II. c. 23, commonly known as "the Gin Act," was passed in 1736, with the object of entirely suppressing the sale of spirits in small quantities. This Act required all persons retailing spirits in less quantities than two gallons at a time, whether for consumption on or off the premises, to take out an annual excise licence on which a duty of £50 was payable, and also imposed a duty of 20/- per gallon to be paid by retailers on the spirits sold by them in addition to the duties payable by the manufacturers. A fine of £100 was imposed on any person retailing spirits without a licence. Licences were only to be granted to the keepers of victualling houses, inns, coffee houses, alehouses, or brandy shops who carried on no other trade. The complete failure of this Act, which will be dealt with subsequently, led to its speedy abandonment, but not until after various Acts increasing its stringency had been tried and failed.

The 16 Geo. II. c. 8 was passed in 1742, and by this Act the duty of 20/- on each gallon of spirits was repealed and the retail licence duty was reduced from £50 to 20/-.

The justices were given authority to deal with the sale of ale, beer, etc., off the premises by the Act 26 Geo. II. c. 31, passed in the year 1753. This Act also for the first time gave statutory authority to the system of annual licences, which had, however, been enjoined by the royal proclamation of 1618, and was probably in use by the justices before that time.

We now come to the period of licensing law consolidation. This was first effected in 1822 by an Act which was superseded by the 9 Geo. IV. c. 61, in 1828. This latter Act, generally known as "the Alehouse Act," remains to this day as the foundation of the English licensing law. It deals with the sale for consumption on the premises only, and, as it repealed all previous legislation regarding justices' licences, the substantial effect was to leave the sale of all alcoholic liquors to be consumed off the premises entirely free, except in so far as excise licences were required. The power of suppressing public houses, which the justices had nominally possessed ever since the Act 5 & 6 Ed. VI., was abolished, though it had been long before superseded for all practical purposes by the system of annual licensing. The other provisions of the Act may be summarised as follows :—No one might sell by retail any exciseable liquors to be consumed in his house without a licence from the justices of the peace, which required to be renewed annually. The justices of the peace were directed to hold in each year a general licensing meeting for the granting of licences, and special sessions for authorising the transfer of licences. Justices of the peace who were brewers or distillers, or otherwise interested in the sale of beer or spirits, or in the house with reference to which an application for a licence was made, or who were related to the applicant, were disqualified from acting at the licensing meeting. Persons applying for new licences, or for the transfer of an existing licence, were required to give notice of the intended application to one of the overseers of the poor and to the constable or other police officer of the parish,

and to post up similar notices on the house with reference to which the application was made, and at the church. The special certificate of character, which applicants for licences had formerly been obliged to furnish, was no longer required. The system of excise licensing, which had been in full force for some years, was connected with the justices' licensing system in the following manner: The licence granted by the justices was a general licence, authorising the licensed person to sell by retail all such exciseable liquors as he should be authorised to sell under any excise licence. Anyone who possessed a licence from the justices was entitled, on production of such licence to the excise authorities and payment of proper duty, to obtain an excise licence to retail ale, beer, cider, and perry for consumption on the premises. And anyone who possessed an excise licence for the retail of ale, beer, cider, and perry, was entitled, on payment of further duty, to obtain further excise licences to retail spirits, wines, made wines, and sweets. No excise licences for the retail of exciseable liquors might be granted except to persons who held a licence from the justices of the peace. The justices' licence contained various provisions, such as were formerly used in recognisances, as to the conduct of the business and the maintenance of good order, and recognisances were no longer taken. The penalties for offences against the licence were a fine not exceeding £5 for the first offence, and a fine not exceeding £10 for a second offence committed within three years of the first offence. If a third offence was committed within three years of the first offence, the case was tried at special sessions, when the justices had the power either to dispose of the matter and impose a fine not exceeding £50, or to adjourn it to quarter sessions, where a fine of £100 might be imposed and the licence declared forfeited.

The 1 Will. IV. c. 64, passed in the year 1830, may be said to open an entirely new chapter in the law of licensing. It enabled any person, being a householder assessed to the poor rate, to sell beer, but not other intoxicating liquors, by retail, without any justices' licence on obtaining an excise licence at the cost of £2 2s. a year. In 1834 this Act was modified by the 4 & 5 Will. IV. c. 85, which

drew a distinction between licences for consumption on and off the premises. The off licences were to be charged at the rate of £1 1s. per annum, while the on licences were to cost £3 3s., and were only to be granted on the production of a certificate of good character signed by six rated inhabitants of the parish. Another change was made in 1840 by the 3 & 4 Vic. c. 61, which provided that no beer licences, whether on or off, should be granted to any person not a real resident holder and occupier of the dwelling-house to be licensed, or in respect of any house which was not of the value of £15 in places containing 10,000 inhabitants, £11 in places of 5000 inhabitants, and £8 elsewhere; but persons who had been licensed before the passing of the Act were to have their licences renewed notwithstanding that the house might not be of the required value.

In 1860 and 1861, by the 23 Vic. c. 27, and 24 & 25 Vic. c. 21, were introduced the refreshment house licence and the so-called "grocer's" licence, both issued by the excise.

In 1869 a further important change was made in the law. By the 32 & 33 Vic. c. 27, passed in that year, nearly the whole of the off licences, which, under the Alehouse Act of 1828, and for the most part before that Act, had been entirely free from control by the licensing justices, were brought under their jurisdiction. A system of excise licences for revenue purposes had existed to a greater or less extent from the Commonwealth period, but the justices had, speaking generally, no control except over the houses where liquor was sold for consumption on the premises. This was now entirely changed. The justices, however, were not given the same absolute discretion which they enjoyed under the Act of 1828. So far as off licences were concerned they were authorised to refuse them upon some one or more of the following grounds only:—

1. That the applicant had failed to produce satisfactory evidence of good character.
2. That the house or shop in respect of which the licence was sought, or any adjacent house or shop owned or occupied by the person applying for the licence, was of a disorderly character, or frequented by thieves, prostitutes, or persons of bad character.

3. That the applicant having previously held a licence for the sale of wine, spirits, beer, or cider, the same had been forfeited for his misconduct, or that he had, through misconduct, been at any time previously adjudged disqualified from receiving any such licence or from selling any of the said articles.
4. That the applicant or the house in respect of which he applied was not duly qualified as by law was required.

In regard to new beer-house licences, absolute discretion was given to the justices, but in regard to existing licences, renewals could only be refused on the same grounds as off licences. The houses to which this protection was granted constitute the well known "Ante-1869 Beer Houses."

In 1872 was passed the 35 & 36 Vic. c. 94, which so largely altered the previous law that it may now be considered, at any rate after the Act of 1828, the principal Act in force. The old forms of licences were abolished, and, instead of the conditions which had formerly been contained in them, a series of enactments creating certain offences was substituted. The closing hours were altered, and a new kind of licence, known as "the Six-Day Licence," was introduced. A new departure was made in requiring all new licences for on consumption to be confirmed before becoming operative, but the old general right of appeal against the decisions of the justices in regard to licences was abolished, so that the only appeal now remaining is an appeal against the refusal to renew an old licence, while the grant or refusal of a new licence, or the renewal of an old one, is not now subject to appeal. Another most important change was that under which an applicant for a renewal was not required to attend in person unless he received notice from the justices requiring his attendance. A further amendment was made in 1874, by the 37 & 38 Vic. c. 49, by which the closing hours were considerably modified, and a new "Early Closing Licence" was introduced. Various small amendments were made, and an entirely new power was given to the justices to grant a new licence provisionally in respect of premises about to be constructed or in course of construction.

The only other statute that need be referred to is the Licensing Act, 1902, 2 Ed. VII. c. 28. By this Act many alterations of the law were made in regard to drunkenness, clubs, etc., which do not directly concern our present subject. The control of the justices over the structure of licensed premises was increased. The annual licensing meeting, which, under the Act of 1828, had been held in Middlesex and Surrey within the first ten days of March, and in other counties between August 20th and September 14th, is for the future to be held in all counties within the first fourteen days of February. In regard to transfers a most important change was introduced, the justices being authorised, for the purpose of preventing repeated applications, to determine the time which was to elapse after the hearing of one application before another could be made. A further important change was made in regard to the costs of justices whose decision was appealed against. Under the Act of 1828, if the appeal failed, quarter sessions could order the appellant to pay the costs of the respondent justices, and where the appeal was successful, quarter sessions might order the treasurer of the county or place to pay the justices' costs. Under the law as amended the discretion of quarter sessions is taken away, and they are bound to order the treasurer of the county or place to pay such part of the justices' costs as cannot be recovered from any other person, so that in the case of unsuccessful appeal the costs will be payable out of public funds if they cannot be obtained from the appellant, and in the case of a successful appeal they will always be payable out of public funds. The most important alteration made by the Act was that in regard to retail off licences, which are now subject entirely to the discretion of the justices. This discretion is, however, limited by the following proviso, which, as will be seen, preserves the right of all persons who were licensed before the passing of the Act, except in case of misconduct :—

"Provided that where a licence for the sale of wine, spirits, liqueurs, sweets, or cider, not to be consumed on the premises, was in force on the twenty-fifth day of June, nineteen hundred and two, an application for the renewal of such licence, or of any licence

granted by way of renewal thereof from time to time, shall not be refused to the person who held such licence on the twenty-fifth day of June, nineteen hundred and two, except on one or more of the grounds on which it might have been refused if this Act had not passed, or on the ground that the licensee has sold surreptitiously under such licence, or has assisted in concealing or misrepresenting the nature of goods sold under such licence, or has in any other way, in the opinion of the licensing justices, been guilty of misconduct in the management of his business under such licence."

II.—Historical Failure of Prohibitory Legislation.

IN view of the fact that the agitation for the suppression of licences out of which the Licensing Act, 1904, arose is based upon the utterly fallacious idea that drinking can be stopped by legislation, we give here a short account of the historical failure of prohibitive measures. Dealing first with English legislation, we may note the now generally admitted failure of the Tippling Acts, which is well summed up in the following quotation from a valuable but little known work, entitled "The Licensing Question," by Frederick N. Newcome. After noticing the earlier Tippling Acts and giving evidence of their failure, he proceeds :—

"In 1623, or just fourteen years afterwards, these statutes were strengthened and made permanent. Provision was now taken for punishing persons caught tippling anywhere, this amendment being deemed necessary owing to people adopting the very obvious course of walking into another parish and there drinking with impunity. Justices of the peace and other officers had their powers greatly enlarged, while as an additional means of checking the national iniquity, all constables, churchwardens, head boroughs, tithing masters, ale-conners, and sidesmen were specially sworn in under penalties to 'present all offences done contrary' to the statute. Here was repressive legislation enough to satisfy anyone of most inordinate greed ! In juxtaposition with such edicts even the Maine Laws themselves are merciful, yet in practice how abortive they

proved. Before two years elapsed the next Parliament found itself compelled to promulgate an 'Act for the further restraint of Tippling in Inns, Ale-houses, and other Victualling Houses,' one effect of which was to render every retailer liable to a 10/- fine for permitting any tippling in his house either by residents or non-residents.

"Here we see the Executive replete with all the powers it could seemingly desire, possessing an arbitrary and extensively used right to summarily punish every minor trespass upon the sworn evidence of a single witness, with practically unlimited control over vendors and consumers alike, with an army of officials bound over to report every breach of the law coming within their knowledge—and what was the result? As before, further legislation was imperative; stronger measures still had to be employed, with the sole effect of rendering the reigning Government odious to the people generally. Armed with such comprehensive authority, the Legislature, one might have thought, would have successfully combatted the difficulty, but history records that they failed. Drinking habits were not obliterated; respectable persons, however, withdrew from the business —the right to supply His Majesty's lieges with potent waters lapsing into the hands of abandoned and profligate characters."

The Gin Act of 1736 was another failure. The following by the economist, J. R. M'Culloch, in the article "Spirits" in the "Commercial Dictionary" admirably states the case:—

"Here was an Act which might, one should think, have satisfied the bitterest enemy of gin. But instead of the anticipated effects, it produced those directly opposite. The respectable dealers withdrew from a trade proscribed by the Legislature; so that the spirit business fell almost entirely into the hands of the lowest and most profligate characters, who, as they had nothing to lose, were not deterred by penalties from breaking through all its provisions. The populace having in this, as in all similar cases, espoused the cause of the smugglers and unlicensed dealers, the officers of the revenue were openly assaulted in the streets of London and other great towns; informers were hunted down like wild beasts; and drunkenness, disorders, and crimes increased with a frightful rapidity.

"'Within two years of the passing of the Act,' says Tindal, 'it had become odious and contemptible, and policy as well as humanity forced the Commissioners of Excise to mitigate its penalties'—('Continuation of Rapin,' Vol. VIII., p. 358, Ed. 1759). The same historian mentions (Vol. VIII., p. 390) that during the two years in question no fewer than 12,000 persons were convicted of offences connected with the sale of spirits. But no exertion on the part of the revenue officers and magistrates could stem the torrent of smuggling. According to a statement made by the Earl of Cholmondely in the House of Lords ('Timberland's Debates in the House of Lords,' Vol. VIII., p. 338), it appears, that at the very moment when the sale of spirits was declared to be illegal, and every possible exertion made to suppress it, upwards of seven millions of gallons were annually consumed in London and other parts immediately adjacent! Under such circumstances, Government had but one course to follow—to give up the unequal struggle. In 1742, the high prohibitory duties were accordingly repealed, and such moderate duties imposed as were calculated to increase the revenue, by increasing the consumption of legally distilled spirits. The Bill for this purpose was vehemently opposed in the House of Lords, by most of the bishops, and many other peers, who exhausted all their rhetoric in depicting the mischievous consequences that would result from a toleration of the practice of gin-drinking. To these declarations it was unanswerably replied, that whatever the evils of the practice might be, it was impossible to repress them by prohibitory enactments; and that the attempts to do so had been productive of far more mischief than had ever resulted, or could be expected to result, from the greatest abuse of spirits. The consequences of the change were highly beneficial. An instant stop was put to smuggling; and if the vice of drunkenness was not materially diminished, it has never been stated that it was increased.

"But it is unnecessary to go back to the reign of George II. for proofs of the impotency of high duties to take away the taste for such an article, or to lessen its consumption. The occurrences that

took place in the late reign, though they would seem to be already forgotten, are equally decisive as to this question."

The Scotch Sunday Closing Act also has been a disastrous failure. It is true that the respectable public houses in Scotland are rigidly closed throughout the whole of Sunday, but only with the result of driving the Sunday drinkers into secret and ill-conducted shebeens. That this is so is well known to the police in every part of Scotland, and from time to time a fit of activity sets in and the shebeens are raided. This no doubt diminishes the practice of shebeening for a time, but presently the trouble blows over and the old game recommences. Those who believe in the virtues of repressive legislation should consult a valuable pamphlet on Sunday drinking in Glasgow issued by the Glasgow Wine, Spirit, and Beer Trade Association in 1890. In this they will find reprinted the newspaper reports of sundry raids upon shebeens during March and April of that year. A search of the Scotch papers would reveal a multitude of other cases, and the whole available evidence goes to show that drinking on Sundays in Scotland has not been suppressed, but only rendered more dangerous and more demoralising by the drinkers being compelled to seek shelter away from the observation of the public and the police authorities.

Exactly the same may be said of the Sunday Closing Act in Wales. Evidence has been accumulating ever since that Act came into operation showing that Sunday drunkenness in Wales has increased rather than diminished. This has been brought about in various ways, but chiefly by shebeening and the immense (and, under the circumstances, natural) increase in the numbers of *bona fide* travellers. In the early part of 1889 there appeared in the *Western Mail* a number of articles and letters on this matter, with the result that Lord Aberdare, who had formerly been a strong supporter of the Act, admitted its failure, and said that if a Bill were introduced into Parliament for the repeal of the Act he could not vote against it. "I should be obliged," he went on, "sorrowfully to admit that the Act, called for with such apparent unanimity, and inspiring so much honest hope of improvement, had failed in its

object, and had done, and was doing, more harm than good." The tabular analysis of the Parliamentary Returns published by the *Western Mail* shows that while the convictions for Sunday drunkenness in Wales in 1881 (the last complete year before the commencement of the Act) amounted to 309, and while there was a slight fall in 1883 (the first complete year after the commencement of the Act) and 1884, the convictions from that time rose rapidly, reaching 965 in 1887.

As illustrating the present working of the Sunday Closing Act in Wales, the following facts published as recently as August, 1904, are noteworthy: In Glamorgan and Breckon the public-houses are closed on Sundays. In Monmouthshire they are open, and the result is an invasion by thirsty souls who look upon the open hostelries as harbours of refuge. The drinkers walk from Glamorgan to Monmouthshire in thousands. In Cardiff there is a population of nearly 200,000 and at Rumney, on the other side of the river of that name (which divides the two counties), public-houses are open from half-past twelve till half-past two and from six till ten. On any fine Sunday multitudes of men and women take this short walk in order to obtain drink. Some of them simply stroll over, have their drink and return; others are on the spot waiting for the doors to open, and remain in the neighbourhood until closing time. During the hours of opening there is in the same way a constant stream of customers towards the inns all along the Monmouthshire border, and the crowds in some places lead to the employment of special police. So rapid is the demand in some places that it is impossible to draw the beer in the ordinary way. Pans and other receptacles are placed under the taps, which are left running, and the beer is ladled out. On the whole there is surprisingly little disorder. When the closing hour is past there is a straggling procession home.

Finally let us see what has been the experience in Canada and the United States. This subject was very ably dealt with in an article by Professor Goldwin Smith which appeared in *Macmillan's Magazine* for March, 1889. The whole article is extremely valuable, but we must content ourselves here with noting some of the leading

points. In 1878 the Canadian Parliament passed the Canada Temperance Act, more commonly called the Scott Act, by which any county or city adopting it by a simple majority of the electors was enabled to prohibit the sale of liquor in the district on penalty of fine and imprisonment. There were also provisions by which after three years another vote could be taken on which, if the majority was against it, the Act would cease to operate. Professor Goldwin Smith says:

"In this Province of Ontario there are forty-two counties and eleven cities. Twenty-eight counties and two cities adopted the Act. The other day ten counties (nine of them at once) repealed it, and in eighteen counties and two cities, petitions for repeal either have been lodged or are understood to be in preparation. In Ontario the Scott Act is generally regarded as dead, and the advocates of prohibitive legislation are turning their minds to other measures. This is a genuine verdict of the people. The liquor trade had exhausted its powers of opposition in the early part of the contest; in fact it hardly appeared in the field without doing mischief in its own cause.

"The general result where the Act has been tried appears to have been the substitution of an unlicensed and unregulated for a licensed and regulated trade. The demand for drink remained the same but it was supplied in illicit ways. It was found by those who were engaged in the campaign against the Scott Act that the lowest class of liquor-dealers were far from zealous in their opposition to prohibitive legislation. They foresaw that the result to them would be simply sale of liquor without the licence fee. Drunkenness instead of being diminished, appears to have increased. A memorial signed by three hundred citizens of Woodstock, including nearly all the principal men of business and professional men, but nobody connected with the liquor-trade, says:

"'The Scott Act in this town has not diminished but has increased drunkenness; it has almost wholly prevented the use of lager beer, which was becoming an article of common consumption; it has operated to discourage the use of light beverages, substituting

therefor in a large measure ardent spirits, and it has led to the opening of many drinking-places which did not exist under the licence law and to the sale of liquor being continued till hours after midnight.' 'From my own observation,' says a leading physician of the same place, 'and the most trustworthy information privately and publicly received, I am satisfied that the most extensive illicit traffic prevails in Woodstock, that the abuse of intoxicating liquors is greatly on the increase here, and that there is a lamentable increase of drinking among the younger men of the community.' At Milton, in the county of Halton, the effects were found to be the same as at Woodstock. Before the adoption of the Act there were but five places in which liquor was sold; after the adoption of the Act there were no fewer than sixteen, and owing to the persecution of the hotels the traffic was thrown into the lowest and worst hands. Forty-eight men of business, including the Mayor and Chief Constable, signed a declaration that the Act had signally failed to reduce intemperance; that the trade, instead of being in respectable hands, was in those of the bottle-hawkers and keepers of low dens; that the effect of the Act has been the substitution to a great extent of spirituous liquors for malt, wine, or cider as beverages; that drunkenness, lawlessness, and perjury were much more prevalent than they had been under licence; and that the Scott Act instead of removing temptation from the young had had the contrary effect, and cases of juvenile drunkenness had become shockingly frequent. Scores of petitions were sent to Parliament from County Councils or other municipal bodies declaring the failure of the Act.

"Wine, beer, and cider may or may not be injurious, but at all events they are not so injurious as ardent spirits; they stimulate less to criminal violence, the evil against which, in dealing with this subject, society is most concerned to guard. A natural tendency of prohibition, however, as the evidence cited seems to show, is to substitute ardent spirits, which, containing a great amount of alcohol in a small bulk, are more easily smuggled, for the lighter drinks of which the bulk is greater. It is well that the attention of philanthrophy, of practical philanthrophy at least, should be specially

called to this point. Not only does prohibition appear practically to encourage the use of ardent spirits; the spirits which it encourages, being sold by the lowest dealers, are apt to be of the most pernicious kind: sometimes they are literally poison.

"It is true that where Prohibition prevails the liquor-shop no longer invites the passer-by with open doors. But the illicit liquor-seller is probably more active than the licensed publican in thrusting his temptation upon those who are most likely to yield to it, especially on the young. A clandestine drinker is sure to be a deep drinker. He is sure to drink, not with his meals, but in the specially pernicious form of drams. He is sure to drink in bad company. He is sure also to contract sneaking habits, and to lose respect for himself as well as respect for the law."

Turning to the United States, Professor Goldwin Smith writes as follows:—

"The results of coercive legislation in the United States, wherever the experiment has been tried, seem to tally with those of coercive legislation in Canada. Maine is the 'banner-state' of Prohibition. It has been trying the system for thirty years, more than time enough to kill the liquor traffic, if the liquor traffic was to be killed. Yet of Maine, Gail Hamilton, who must know it well, said in the *North American Review*:—'The actual result is that liquor is sold to all who wish to obtain it in nearly every town in the State. Enforcement of the law seems to have little effect. For the past six years the city of Bangor has practically enjoyed free rum. In more than one hundred places liquor is sold, and no attempt has been made to enforce the law. In Bath, Lewiston, Augusta, and other cities no real difficulty is experienced in procuring liquor. In Portland enforcement of the law has been faithfully attempted, yet the liquor trade flourishes for all classes, from the highest to the lowest. . . . In a journey last summer for hundreds of miles through the cities and through the scattered villages and hamlets of Maine, the almost universal testimony was: "You get liquor enough for bad purposes in bad places, but you cannot get it for good purposes in good places."' 'What works against Prohibition,' Gail Hamilton adds,

'is that, in the opinion of many of the most earnest total abstinence men, the original Maine Law State, after thirty years of Prohibition, is no more a temperance State than it was before Prohibition was introduced.' It appears that upwards of five hundred people in the State pay United States retail liquor-tax, though Archdeacon Farrar was informed that the trade had been completely driven out of sight. The Maine Prison Report for 1884 says: 'Intoxication is on the increase; some new legislation must be made if it is to be lessened. In many of our counties Prohibition does not seem to affect or prevent it.' In the city of Portland (pop. 34,000), in 1874 the arrests for drunkenness were 2318. But drunkenness is not confined to the cities. Every one of the sixteen counties furnishes its quota. The number of committals for drunkenness for one year was 1316 for a population of 648,000, while in Canada, an area at that time not under the Scott Act, with a population of 661,000, and a town population as large as that in Maine, showed only 593 committals, less than half the number of those in the model State of Prohibition. General Neal Dow himself, upbraiding his political party for its slackness in the cause, complains of the number of low drinking-places which infest the cities of Maine. The New York *Sun* of September 9th last, after investigation carried on through its correspondent, said: 'The actual state of affairs in Maine is perfectly well understood by every Maine man with eyes in his head, and by every observant visitor to Maine. In no part of the world is the spectacle of drunken men reeling along the streets more common than in the cities and larger towns of Maine. Nowhere in the world is the average quality of the liquor sold so bad and consequently so dangerous to the health of the consumer and the peace of the public. The facilities for obtaining liquor vary in different parts of the State from the cities where fancy-drinks are openly compounded and sold over rosewood bars to the places where it is dispensed by the swag from flat bottles carried around in the breeches' pockets of perambulating dealers. But liquor, good or bad, can be bought anywhere.' Perjury, the *Sun* correspondent also states, as usual, is rife. Nor does Maine fulfil the golden promises held out by Prohibition of

immunity from crime and increase of prosperity. Though the population of the State has been stationary, the statistics of crime have increased. In 1873 the number of committals to gaol was 1548; in 1884 it was 3672. The pauper rate in the cities is larger than those of any other State."

After this evidence all reasonable men will be prepared to follow Professor Goldwin Smith when he says that "in an ordinary way we submit that, whether in the hands of kings or majorities, political power is a trust held for definite purposes which do not include interference with your neighbour's diet or any of his personal habits any more than they include the limitation of his industry or the confiscation of his property."

III.—The Liquor Traffic in Relation to the Revenue.

ONE of the most important things for a statesman to consider when dealing with any question relating to the liquor traffic is the enormous revenue which the State has derived for a long period from the liquor trade, which revenue was for 1903 about fifty per cent. greater than for 1870. If the local taxation receipts as well as the exchequer receipts are taken into account the increase is greater still. It may be interesting to set out here some typical figures.

Taking first the excise revenue we find that it produced in 1870:—From spirits, £10,969,188; from beer, £6,539,689; and from licences, £1,655,966; total, £19,164,843. In 1880:—From spirits, £13,631,785; from beer, £7,360,685; and from licences, £1,884,987; total, £22,877,457. In 1890:—From spirits, £13,860,002; from beer, £9,410,426; and from licences, £340,745; total, £23,611,173. In 1900:—From spirits, £19,335,360; from beer, £11,887,923; and from licences, £182,544; total, £31,205,827. And in 1903:—From spirits, £18,164,359; from beer, £13,263,890; and from licences, £184,070; total, £31,612,319.

The figures of the customs' receipts were in 1870:—From spirits, £4,194,820; from wines, £1,477,055; total, £5,671,875. In

1880 :—From spirits, £4,682,928 ; from wines, £1,391,209 ; total, £6,074,137. In 1890 :—From spirits, £4,681,225 ; from wines, £1,302,160 ; total, £5,983,385. In 1900 :—From spirits, £4,898,930 ; from wines, £1,729,540 ; total, £6,628,470. In 1903 :—From spirits, £4,739,781 ; from wines, £1,523,856 ; total, £6,263,637.

The total taxation raised from the liquor trade and paid into the exchequer was in 1870 : £24,836,875 ; 1880 : £28,951,594 ; 1890 : £29,594,558 ; 1900 : £37,834,297 ; and 1903 : £37,875,956.

In addition to the above, the amounts received and paid over to the local taxation account were in 1890 : £1,569,058 ; 1900 : £3,634,572 ; and 1903 : £3,561,124.

IV.—The Licensing Law and the Question of Compensation.

IN the year 1891 there was decided by the House of Lords the famous case of *Sharp* v. *Wakefield*, in which it was held that licensing justices have the power to refuse at their absolute discretion the renewal of a licence merely on the ground that the house is not needed, and apart altogether from any question of the misconduct of the licence holder. This case, although undoubtedly of importance as a decision of the highest court of the Realm, did not really do anything more than emphasise the view of the law which had been repeatedly declared, and which in fact is so clear upon the face of the statutes that it is somewhat strange that the trouble and expense of appealing to the House of Lords should have been incurred at all. The whole question turns upon the construction of the Alehouse Act, 1828, and when this is fairly looked at there really seems no room for dispute about the matter. That justices have absolute discretion in dealing with applications for new licences has never been questioned, and, seeing that the statute draws no distinction between new licences and renewals, it is obvious that the discretion must be the same in both cases. By section 1 a special session of the justices of the peace is to be held annually "for the purpose of granting licences

to persons keeping, or being about to keep, inns, alehouses, and victualling houses, to sell exciseable liquors by retail to be drunk or consumed on the premises therein specified." It is to be noted that "persons keeping, or being about to keep," inns, etc., that is to say persons already licensed and those not yet licensed are placed upon the same footing. The section then proceeds to declare that it shall be lawful for the justices "to grant licences for the purposes aforesaid to such persons as they the said justices shall in the execution of the powers herein contained and in the exercise of their discretion deem fit and proper." The whole substance of the Act is contained in this section; what follows is merely machinery for carrying the intention of the Act into effect, and it does not in any way limit the discretion of the justices.

The case of *Sharp* v. *Wakefield* is sometimes spoken of as if it decided something novel. This, however, is an entire mistake. From the year 1870 at least there is a series of cases distinctly affirming the discretion of the justices both on the grant of new licences and on the application for renewals. It so happened that none of these cases was taken to appeal, possibly because the correctness of the decisions was too obvious; and the only thing that distinguishes *Sharp* v. *Wakefield* from the earlier cases is that it was taken to appeal, and that the Court of Appeal and the House of Lords affirmed the decisions in it and the earlier cases.

The chief argument used for the purpose of showing that the discretion admittedly vested in justices by the Alehouse Act, 1828, had been subsequently limited was derived from section 42 of the Licensing Act, 1872, and section 26 of the Licensing Act, 1874. By the former of these sections the holder of an existing licence was relieved of the necessity which he had been under of attending the annual licensing meeting to apply for a renewal "unless he is required by the licensing justices so to attend"; and by the latter section it was further enacted "that such requisition shall not be made save for some special cause personal to the licensed person to whom such requisition is sent." It was contended on behalf of the appellant that some special cause personal to himself must

mean something in relation to his conduct of the licensed premises. This argument on the face of it appears to be of some weight, but Lord Herschell's answer is amply sufficient. In the course of his judgment in *Sharp* v. *Wakefield*, he said: "I think the object of this provision is obvious. Under the earlier Act the justices at any sessions might (or at the very least it was open to contention that they might) have required all applicants for a renewal to attend as before. The later Act prescribes that no such requisition is to be made except for some special cause personal to the recipient of the requisition. The cause, it will be observed, is to be a cause for requiring the individual to be present, and the fact that objection was taken to the renewal of his licence would be such a cause. The language of the statute has no reference to the causes which, when the applicant attends in pursuance of the requisition, may operate in the minds of the justices to determine whether his application shall be acceded to or not."

We have thought it right to insist thus strongly upon the absence of any legal right to a renewal of a licence because the very unfortunate attempt which was made to uphold the contrary contention in *Sharp* v. *Wakefield* has served to distract attention from the other and better grounds on which those interested in licensed property whether as owners or occupiers may reasonably claim to be compensated when licences are withdrawn without any fault of their own. Those who have spoken so freely of *Sharp* v. *Wakefield* as being an absolute answer to the claim of the licence holder to compensation when his licence is refused have usually either not been acquainted with some of the most important parts of the judgments in that case or have for purposes of their own chosen to ignore them. The Lord Chancellor in the early part of his judgment expressed himself as follows: "An extensive power is confided to the justices in their capacity as justices to be exercised judicially, and discretion means, when it is said that something is to be done within the discretion of the authorities, that that something is to be done according to the rules of reason and justice, not to private opinion; according to law

and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular, and it must be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself." And later on he said: "I am very far, indeed, from saying that, assuming the complete discretion that I have indicated to exist, it would be likely that the persons exercising it would consider an original application in the same way as one which was applied for by the person who has already been licensed for one year. Of course, the justices would remember that a year before a licence had been granted, and presumably, unless some change during the year was proved, they start with the fact that the topics to which I have referred have already been considered, and one would not expect that those topics would be likely to be re-opened, unless, as I say, some change has been proved. This would be likely to limit the inquiry to the conduct of the house, and the character of the licensee, and perhaps the condition of the house, but as matter of fact, and not as matter of law at all." Lord Bramwell also enforced the same view in the following observations: "The Legislature has most clearly shown that it supposed—contemplated—that licences would usually be renewed; that the taking away of a man's livelihood would not be practised cruelly or wantonly. True, and because it showed that plainly, it may have felt it safe to leave an absolute discretion with the justices, a discretion that would be discreetly exercised. And it has been so. I do not say in this case, I know nothing about it; I mean by justices generally. This is shown by what was mentioned by Mr. Poland, namely—that at the sessions when there used to be an appeal against a refusal of a first licence the appellant began: the burden of proof was on him, he had to make out that he ought to have a licence. Where, on the other hand, the appeal is against a refusal to renew a licence, the respondents begin: the burden of proof is on them, they have to make out that the applicant ought not to have a licence; practically that his licence should be taken from him. This, Mr. Poland says, was the practice throughout England. One may well suppose this to be known to the Legislature,

and to be one cause why the justices are trusted with such extensive powers."

If further evidence were necessary to show the expectation of the Legislature that licences would usually be renewed from year to year without question, it may be found in the provisions which have been made for the protection of the owner. If the licence is to be looked upon merely as an annual grant unaccompanied by any reasonable expectation of renewal, the increase in the letting value of the premises, and therefore the interest of the owner, would be practically *nil.* That the Legislature, on the other hand, regarded the interest of the owner as a very substantial one is evidenced by section 56 of the Licensing Act, 1872, and section 15 of the Licensing Act, 1874. By the former of these sections, when any tenant is convicted of an offence the repetition of which may render the premises liable to be disqualified, the clerk to the licensing justices is required to serve notice of the conviction on the owner. Further, by the same section, when any order has been made declaring any licensed premises to be disqualified, such order must be served upon the owner, and he is given the opportunity of appealing on certain grounds. By the latter section, where a tenant of licensed premises is convicted of certain offences by which he becomes personally disqualified, or has his licence forfeited, the owner may apply for authority to carry on the business until the next special sessions, and may then obtain the grant of a licence in respect of such premises. The owner also has under section 27 of the Alehouse Act, 1828, the right to appeal to quarter sessions as a person aggrieved by the refusal to renew the licence of his tenant. It was under this enactment that the famous appeal of *Sharp* v. *Wakefield* arose, the appellant being Susannah Sharp, the owner of the inn, the licence for which had been refused to her tenant.

The expectation of the Legislature in regard to the renewal of licences is also indicated by section 42 of the Licensing Act, 1872, and section 26 of the Licensing Act, 1874, which have already been referred to in connection with *Sharp* v. *Wakefield.* By these two sections taken together it is enacted that a licensed person applying

for the renewal of his licence need not attend in person at the annual general licensing meeting unless he is required by the justices "for some special cause personal to the licensed person" so to attend, and no objection can be considered unless the licensee has received a written notice of intention to oppose the renewal, which notice must state in general terms the grounds of opposition, or the licensing meeting has been adjourned in order to enable him to attend and meet the objection. The justices are also prohibited from receiving any evidence with respect to the renewal which is not given on oath, although they are not so limited in respect of first applications.

Some considerable importance also should be attached to the practice which has prevailed for a great number of years, and the legality of which is beyond doubt, in regard to the assessment of compensation when licensed property is taken for public purposes; and in regard to payment of death duties. When property to which a licence is attached is taken compulsorily for public purposes the compensation is invariably assessed on the basis of the property remaining licensed; that is to say, the reasonable expectation of a renewal is recognised and acted upon. Also when licensed property is valued for the payment of death duties, it is valued upon the same basis. It is surely rather hard measure for the owners and tenants of licensed houses to be told that when they have to pay something to the State, their property must be valued as if the licence were to continue in the future, but that the justices may from mere prejudice forfeit their licence at any time.

Those who are so anxious to uphold the right of the magistrates to take away licences for any or no reason are in the habit of speaking of this power as if it were in some way inherent in all licensing law. This, however, is far from being the case. The power which the justices undoubtedly possess under the Alehouse Act, 1828, is based wholly and solely upon the use of the words "in the exercise of their discretion." But these words have not been invariably used in licensing acts, and, in fact, many owners of licences have a legal vested interest in them. It is necessary only to mention briefly the Ante-1869 Beer Houses, the licences of which

are renewable for ever provided there is no misconduct. The so-called "Grocers' Licences" also are protected by the Act of 1902, although, unlike the Beer House licences, they are renewable only to the person who held such licence on the 25th June, 1902. But perhaps the strongest case of all is that of the ordinary publican's licence in Ireland. By the Licensing Act of 1833, renewals were to be granted by the excise on a certificate of six householders that the premises had been properly conducted, and until 1854 nothing more was required. By an Act of that year, it was also made necessary for a certificate to be obtained from two justices as to the good character of the applicant, and the peaceable and orderly manner in which the house had been conducted. This, however, is merely a certificate as to the facts, and justices have no discretion as to granting it if the facts are properly made out. The Irish publican, moreover, is protected not only on the renewal but also on the transfer of a licence. By the Act of 1833, the justices are entitled to consider on the grant of new licences and on transfers the following three questions:—1. The character, misconduct, or unfitness of the applicant. 2. The unfitness or inconvenience of the house or place. 3. The number of previously licensed houses. In Clitheroe's case (*Regina* v. *Recorder of Dublin*), decided in 1878, it was held, following the practice which was proved to have been in existence for at least 30 or 40 years, that the third question was in its nature not applicable to a transfer; and that therefore on an application for a transfer the first two grounds only could be considered. It will be noticed that this decision proceeds entirely upon the particular words of the statute, and is therefore in no way in conflict with the judgments in *Sharp* v. *Wakefield* and other similar cases which were decided on the English statutes which purport to give absolute discretion, and do not specify any particular grounds upon which the magistrates are to decide. This case was decided by the Queen's Bench Division, when that Court was, so far as Ireland is concerned, the final Court, and any appeal therefrom would have had to be taken to the House of Lords. Since that time, however, an appeal has been made to the Court of Appeal in Ireland, and two cases at

least have been brought before that Court with a view to securing a reversal of *Clitheroe's case.* It must be admitted that some remarks have been made by the judges throwing doubt upon that case, but it has never been over-ruled. Some of the judges have held that, having been decided by what was at that time the final Court, the Court of Appeal must be held to be bound by it unless reversed by the Lords. Some of the judges, on the other hand, have held that if a precisely similar case should come before the Court of Appeal, it would be their duty to consider the matter independently and on its merits, without regard to the previous decision of the Queen's Bench. This reconsideration, however, has never been made, since the Court of Appeal has hitherto found it possible to decide the cases on the ground that the licence sought to be transferred had been dormant for some time, and that therefore it was really a case of a new grant masquerading as a transfer, and such cases they held not to be within *Clitheroe's case.* One case, however, namely, *Regina* v. *Justices of Cavan*, has come before the Queen's Bench Division which is admittedly on all fours with *Clitheroe's case*, but for some unexplained reason it did not reach the Court of Appeal. It is much to be desired that this question should be finally determined by the House of Lords, but at present, at any rate, *Clitheroe's case* stands as an authoritative declaration of the law. The law, therefore, in Ireland is that it is only upon a new grant, or upon such a transfer as substantially amounts to a new grant, that anything can be considered beyond the character of the house and the character of the applicant.

Perhaps one of the strongest precedents for the grant of compensation upon the abolition of a mere expectancy (which admittedly is all that a licence-holder possesses) is to be found in the legislation proposed by Mr. Gladstone and adopted by Parliament on the abolition of Army Purchase in 1870. By a statute of the 49th year of George III. it was made a criminal offence to pay or receive for a commission more than the price allowed by the King's regulations. "Yet," as Mr. Sanger says in his useful book entitled "The Place of Compensation in Temperance Reform," "on the abolition of purchase in the

army the officers then in service were compensated on the basis, not only of the regulation price, but also of the over-regulation price: that is, the customary sum payable in a regiment beyond the regulation price. This is certainly most remarkable. A custom had grown up in spite of continual prohibitions by the Commander-in-Chief, by the Annual Mutiny Act, and the statute above quoted. The custom was not only non-legal, but criminal, and yet the legislature decided to pay several millions of pounds to persons as compensation to them for not being permitted to continue to infringe a penal statute. It is noteworthy, too, that this was not a case of an important trade in which capital had been embarked, or in which very many persons were directly or indirectly employed, but of a traffic which was not only against the public interest as well as the law, but in which no capital or labour was embarked. If no compensation had been given there would have been almost no disturbance to the economic equilibrium of the country." If this case was one for full compensation, surely there can be very little room for argument as to the publican's position. His expectancy, at any rate, does not arise out of the commission of a crime, and he therefore occupies an enormously stronger position than those officers in the army who were compensated (and, as most people think, rightly compensated), not only for the regulation, but for the over-regulation price of their commissions.

V.—History of the Compensation Question.

LORD BRAMWELL, who was one of the most distinguished of the judges who took part in the decision of *Sharp* v. *Wakefield*, was so impressed with the unfair way in which that decision might operate that he shortly afterwards drafted a Bill for the amendment of the law. The measure, which was unusually brief, provided that "Licensing Justices shall not be at liberty, in the case of premises licensed at the time of the passing of this Act, to refuse the renewal or transfer of a licence for the sale of any intoxicating liquors in any such premises, except upon one or more of the grounds specified in

section eight of the Wine and Beerhouse Act, 1869; but nothing herein contained shall limit or extend their discretion in the grant or refusal of applications for a new licence." It also provided that "When an application for a renewal or transfer of a licence is refused, the Justices shall specify in writing to the applicant the grounds of their decision." This Bill Lord Bramwell did not live to introduce. But in 1895 it was brought into the House of Lords by Lord Wemyss, under the title of the Licensing Acts Amendment Bill. Here the matter rested for some years, but all the time there was a constantly growing feeling on the part of those interested in licensed property that they were being very unfairly dealt with by certain benches of magistrates. It is doubtful, however, whether any decisive steps to amend the law would have been taken had it not been for the passing of the Licensing Act, 1902. It is true that this Act merely altered the licensing law in certain minor matters, and did not in the slightest degree deal with the question of the renewal of licences either one way or the other. It is, however, a fact that this Act, directing attention as it did to the whole policy of the licensing law, and coinciding, as it also did, with a feeling in certain quarters in favour of a reduction of licences, led to a refusal of renewals on a much larger scale than had hitherto been attempted.

The actual results of the Licensing Sessions of 1903 were the refusal of 639 licences throughout England and Wales, which compares with an average of only 189 as shown by the five previous annual Parliamentary Returns. The refusals on the sole ground of "not required" numbered 220, while 201 licences were taken away on the same ground, coupled with one or more others. The additional objections in this class of cases were generally very minor matters, such as defects in the structure of premises which could be made good by alterations, and were largely brought in as mere make-weights to support refusals. In other words, a large proportion of the 201 licences in this class were really refused as part of the hasty policy of reduction adopted by the justices. The actual loss was reduced after appeals to Quarter Sessions; but the redress was limited. The 639 refusals were reduced by 159 successful appeals

out of 308 taken into court, leaving a net loss of 480 licences. But even so, it must be remembered that the dismissed appeals represent a most serious loss to those interested in the particular houses, and that, when appeals succeeded, the licences were only regained after a large burden of irrecoverable costs had been incurred.

The record of licences refused, however, is very far from representing even the greater part of the loss inflicted upon the liquor trade in connection with the Licensing Sessions of 1903. In many parts of the country the justices, by threats that, unless their wishes were complied with, they would refuse a large number of renewals, succeeded in compelling the surrender of licences to the extent of about 350. Moreover, some 400 benches of justices indicated that they would take up the question of the reduction of licences in 1904.

In consequence of this unprecedented state of affairs, action was taken in both Houses of Parliament. On March 16th Lord Burton asked the Lord Chancellor whether licensing justices were not bound to be guided by the state of facts established before them in each case, and whether they might refuse renewals to carry out a prearranged policy of reducing the number of licences. Lord Burton further called attention to the new policy of confiscation without compensation. The Lord Chancellor replied at length. The following are extracts from his statement—a statement which the Prime Minister alluded to on March 18th as a "weighty utterance," delivered "with every circumstance of care and solemnity." The Lord Chancellor said:—

> "To the first part of the question, I answer very distinctly that I do think magistrates are bound, in the discharge of their duties as licensing justices, to be guided by the state of facts established before them in each case; and I think if they were to proceed on some preliminary view of the policy that they ought to pursue, they would be exceeding their duty. I feel some hesitation in quoting my own views which were expounded at some length in the well-known case of *Sharp* v. *Wakefield*, in which I pointed out that the magistrates should

proceed judiciously—that is to say, not necessarily, as I pointed out in a subsequent case, by all the forms in which strictly judicial proceedings are guided, but that they must have regard to those principles of justice, and the recognition of the rights of other people, which are the basis of the administration of justice in whatever court it is administered, and that they must not, to use the language of my noble friend, proceed capriciously or from mere fancy. In the case to which I have already referred, Lord Hannen points out very clearly what is the distinction between acting judicially and acting capriciously. He says: 'Instances have been brought before the courts where justices have expressed and acted upon a general intention with regard to all licences, whereas it is their duty to consider each individual case on its own special merits. The object of the 26th section of the Act of 1874 appears to be to enforce this duty, and to require the justices to particularise the special ground on which they consider the personal attendance of the applicant necessary.' I think I may quote an instance in which Lord Selborne gave a very valuable judgment, where there was a general Act of Parliament prescribing the hours at which public houses should be open. He pointed out that, although in that case the matter was left to the discretion of the magistrates, it must be a discretion applicable to a particular district and a particular case, and that a general resolution on their part was ultra vires—that they had no right to come to such a conclusion . . . . Where you are exercising a discretion which the magistracy has had conferred upon it, you must in each case exercise the discretion, and not for any purpose, however praiseworthy, attempt to act the part of legislator, instead of doing that which the Legislature requires them to do —act as judges to determine each particular case. How can the Legislature ever define the exact circumstances in which a licence is not to be granted? It would be impossible to define it. Therefore, you must leave it to the discretion of the justices, but the Legislature assumes that the discretion so given must

be exercised judicially and with reference to the real needs and requirements of the locality and conditions under which the licensed house is already held. It must be remembered—and it sometimes seems to be forgotten—that a licensed house can only have been licensed by the justices, and it would be an intolerable thing to suppose that although the justices themselves may be different—there may be different men on the bench, some may have passed away — they should oscillate backwards and forwards in their policy until there was nothing like continuity of policy in the body to which they belonged. Take the converse case. Supposing some of the justices were to suggest that it would be a better thing to have free trade in licences; supposing they came to the conclusion that it would be much better that anybody who applied for a licence should get one. Would anybody admit that that was an exercise of their discretion within the meaning of the statute? If such a resolution were arrived at on the other side beforehand, I think it would be equally beyond any discretion entrusted to the magistrates by the Legislature. I may say with regard to another part of the question that where you are dealing with the renewal of licences one has to be careful not to overstep the case on either side. It is perfectly true that the renewal of a licence is a new licence—new in the sense that magistrates have the same discretion in granting it for the next year as they had for the last year. That is a proposition that cannot be denied. The Legislature, I think, has assumed that there was a difference in the mode of dealing with the two cases, because it is in the Act of 1872 specially enacted that all applications for renewal of licences shall be dealt with by evidence given on oath. I read, with very great satisfaction, some observations made by my noble friend Lord Lindley, when presiding at Quarter Sessions. Speaking as the Chairman, he pointed out with great force, and in words in which I concur, the mode in which justices should approach this question. He said: 'It is obviously much easier to determine whether it is desirable to

grant a new licence than it is to determine whether to renew the licence already granted. It is true no owner or tenant of a public house has a right to have his licence renewed, but the expectation that it will be renewed, unless there is good reason why it should not, is founded on human nature and is perfectly reasonable, and cannot be ignored by any fair-dealing man. Outlays are made on the faith of it, and expectation gives a market value to the house which can be very closely estimated by persons accustomed to value such matters.' I think what the noble Lord has said in reference to the mode in which the Government treats these houses in exacting taxation adds much to the noble Lord's observation that 'to refuse to renew a licence may be to inflict serious loss on the owner or tenant of the house, possibly on both, and no body of gentleman can be expected to do this without coming to the conclusion that sufficient reasons exist for taking such a step. But, as already stated, misconduct is not the only legitimate ground for refusing a renewal.' I think that expounds with great force, and with perfect justice, the true relations of this subject—the duty of the justices. I concur with every word my noble friend has said, always remembering that if you are arguing the strict matter of the law, there is no doubt the justices have a discretion in this sense, that if you can find that they have taken into consideration the matter, and have come to the conclusion that such and such a licence ought not to be renewed, although you may not agree with them on the grounds on which they have proceeded, nevertheless it is their discretion and not yours."

The Liquor Trade, having decided to lay the whole position clearly and fully before the Government, an influential deputation, thoroughly representative of all sections of the trade, was arranged under the auspices of the National Trade Defence Association.

Mr. Gretton, M.P., addressing the Prime Minister, said the great and influential deputation which he had the honour to introduce was

one of the largest and most representative which had ever appeared on the questions affecting the licensed Trade of this country. The Trade was labouring under a real and urgent grievance, which the members who would speak would bring more particularly to the Premier's notice. There were only four speakers, and the remarks would be confined strictly to the purpose which they had in view, and which was so greatly agitating the Trade, and he hoped it would be found that the speakers, who represented all sections of the Trade, spoke with absolute unanimity.

Mr. E. Morall, as president of the Licensed Victuallers' National Defence League from whom the request for the deputation originated, thanked the right hon. gentleman and his colleagues for their courtesy in receiving them. He gave a few examples of the wrong done to licence-holders whose property was taken away for no misconduct, inasmuch as they had for years conducted their houses properly as law-abiding citizens. In view of these instances—and they could be multiplied to a considerable extent—and in conjunction with the fact that at about 400 licensing benches threats had been made that in 1904 their property was to be arbitrarily dealt with without compensation, he submitted the licensed victuallers were justified in appealing for the protection of their property, which, together with the protection of life, formed the fundamental principle of law and the first duty of the Government of the day.

Mr. Edward Johnson, the chairman of the Licensed Victuallers' Central Protective Society of London, called attention to the fact that since 1899 the Trade had had to bear an additional 1s a barrel on beer and 8d a gallon on spirits. Moreover, it was impossible to estimate how much of their property had been arbitrarily taken away, for, although it might please certain gentlemen to talk about voluntary surrender, the cases to which such language could be fairly applied were very few and far between. Had there been no power behind the bench to practically enforce surrender there would have been little heard of surrender schemes. They had lost hundreds of thousands of pounds worth of property. Over 400 licences, he believed, had been so-called "voluntary surrenders" at the late

sessions alone, and in 1901-2 they paid over £2,900,000 more by the extra taxation on beer and spirits than in 1899. They were not asking for favours, but for an assurance of fair dealing, and if once that assurance was given by Parliament they felt sure that in its wisdom it would devise the means.

Mr. J. C. Groves, M.P. (Salford), said a statement placed before the then Home Secretary in 1901 anticipated the very difficulties that had since arisen. There was an existing anomaly in two bodies dealing with licensed property. In many instances it would seem as if the justices took the view that, inasmuch as the Licensing Act of 1902 made no provision for compensation, there appeared to be no intention on the part of the Government to deal with the question, and that therefore they must take the matter into their own hands. The Trade therefore now felt themselves compelled to ask for protection from confiscation. (Hear, hear.) In this demand they were fortified by the many expressions of regret on the part of the justices that no compensation fund was available, and by the strong evidence that the sense of fair dealing of the community was offended by the confiscation of property and the ruin of individuals being inflicted when there was no ground of complaint against the way in which the house, the licence of which was refused renewal, had been conducted. (Hear, hear.)

Mr. John Brickwood (Portsmouth), chairman of the National Trade Defence Association, asked whether a Conservative Government assented to the doctrine that the community had the right to take away the property of law-abiding citizens without paying for it. Even if it were clearly proved that it was to the advantage of the community that the individual should be robbed, the community had not the requisite right. The question of compensation was and had been for years the crux of licensing reform. The new bill did not deal with compensation. The great majority of the House, and in the word of an ex-whip, "the whole Conservative party," were virtually pledged to compensation, and they would, he believed, be only too glad to redeem their pledge. They agreed with that statesman whose safe return after his great labours was a matter of

national rejoicing, irrespective of party, when he said he had "no sympathy at all with those who desired to carry out a public disadvantage at the cost of private injustice." If the Government thought with him he asked them to take action.

Mr. Balfour said:—Mr. Gretton and gentlemen, nobody is likely to undervalue either the importance of this deputation or the importance of the subject which they have brought before my colleagues and myself. We recognise to the full that all those interested in the liquor trade of this country are at this moment being subjected to a very serious and, as I think, a very unjust strain—(cheers)—and it is natural and right that they should take an early opportunity of laying their case before His Majesty's Government, before Parliament. I do not think I need say anything to this assembly to dissipate the erroneous impression which attributes to the bill passed by my right hon. friend near me (Mr. Ritchie) last year some of the difficulties in which we now find ourselves. That is a wholly erroneous view of the situation, a view for which I believe there is no foundation at all. Of course, it is possible to say, as some critics seem disposed to say, that the bill might have contained something which it did not contain. That is true of all measures brought before Parliament, and I will only say on that point that had that bill endeavoured to deal with the immense problems which had not then been forced before our attention in the way in which they have been forced since it would have had no chance of passing in the course of last session, and a measure which is invaluable to the community, which is destined to do admirable work in the interests of sobriety, and because it is going to do good work in the interests of sobriety, is one which the whole Trade ought to welcome and does welcome—(cheers)—for no class of men have greater interests in sobriety than they have—that bill, I say, would not have been added to the Statute Book had it embraced all the subjects which are worthy of the attention of Parliament in connection with this vexed and complicated problem. I do not know that you will ask me to say anything on the question of magistrates' law. I am not a competent critic of legal matters, and the Lord Chancellor, who is eminently a competent critic, has recently at great

length and with every circumstance of care and solemnity delivered a weighty utterance in the House of Lords upon that aspect of the question. Leave that on one side. I do not feel competent or qualified to deal with it, but I suppose I ought to say one word upon two matters which have been brought to my notice by speakers this afternoon. One is the statement made, I think, by Mr. Groves, who told us that Brewster Sessions conceived themselves to be acting under instructions from Quarter Sessions in the policy they have recently been pursuing. I do not conceive it to be the business of Quarter Sessions to give instructions of that character to the Brewster Sessions. They are a Court of Appeal over the work of the Brewster Sessions, and they ought not, I conceive, to lay down any judgments until the matter comes before them in their judicial capacity as a Court of Appeal. (Cheers.) The other point, and the only other point which I need touch on before I come to the main issue before us, is the inference which these magistrates had drawn, that because in a bill of last year, which dealt with a definitely circumscribed set of problems connected with the temperance question, compensation has not been mentioned, that therefore compensation was not intended, and that His Majesty's Government regarded compensation as a matter in which they had no particular interest. Well, I don't know whether magistrates who have drawn this strange inference from these misleading premises are very many, but if they are very many I should certainly not have my confidence in their capacity in other walks of life very greatly augmented. (Hear, hear.) However, those are after all but subsidiary issues. What we have got to consider is the actual condition of affairs which appears to have been brought about over a large area of the country through the policy newly and recently adopted by these magistrates. I confess I regard this sudden and rapid change as most regrettable from a great many points of view. I think it is regrettable because it really hardly gives a fair chance to the bill of my right hon. friend Mr. Ritchie—the bill of last year—to work all the good which I am confident it will work. (Hear, hear.) The problem of temperance was, I think, left in a better state by legislation last year than it has ever been in my

experience. (Hear, hear.) The bill had been passed by common consent, accepted, I believe, even by extreme teetotalers, but at all events accepted by the more moderate representatives on the temperance side. It was accepted likewise, and accepted cordially, by gentlemen in this room representing the great industry for which you come here to-day to plead, and it was in a way to carrying out uncontroversially, without bitterness, without injury to any man in his legitimate business or in his property, a great work of social reform. (Cheers.) I do not believe that that smooth path can remain uninterrupted now that this bitter controversial question has suddenly been dragged to the front. (Hear, hear.) For that reason, if for no other, and I have stronger reasons to adduce presently, I confess I regret the course which the magistrates have pursued, but there are other reasons, and the main reason is the one which every speaker this afternoon has urged upon me—namely, the insecurity which has been wrought in every branch of the Trade, and as a consequence accompanying that insecurity the gross injustice which has been done to a large number of individuals. (Cheers.) I gather that that which was a legitmate investment is regarded as an investment no longer, or scarcely worth regarding as an investment. I understand that property which was insurable is insurable no longer, and that one immediate result of what has occurred is that not only does every licence holder feel that he holds his licence without any fixed or adequate security, but that he cannot even go, like other persons engaged in a hazardous business, to an insurance office, and by calculating the risks make provision against loss which may in a moment, in the twinkling of an eye, reduce a man from a competence to penury. (Hear, hear.) Another result, I gather, is that property which is taxable and has been taxed is now treated as if it were not property at all, and the State having extracted its full quota from a goodwill in which citizens have honestly invested, it now seems that that which everybody taxes as being property has lost all permanent or fixed value. I think either the Inland Revenue endeavoured to extract for public purposes from licence holders money which they had no right to extract, or else those

licence holders should possess that general security which the law desires to give to all who hold honestly-acquired property. It is undeniable, I think, quite apart from all questions of temperance, that the state of things which, if it has not arisen, seems in process of arising—I won't put it more strongly than that—is one which is of the most serious character, and which does not lose any part of its seriousness when I reflect that the magistrates who are effecting these sudden resolutions are themselves the very magistrates, or the successors in office of the very magistrates, which brought about the state of things which is now being rapidly, if not arbitrarily, altered. I cannot believe that any man, whatever his opinions may be, could convince himself that absence of any continuity of policy in a body with a continuity of evidence like our benches of magistrates can be other than a public misfortune. I do not ask whether the existing system is perfect. I do not say that the new system has not got merits, but I do say that when the matter is left to the bench of magistrates they must consider that they have, as it were, something in the nature of a corporate existence and succession, and although, of course, they are not bound to the letter by the action of their predecessors, they must consider themselves as in part trustees of the past, and that any change which is made should be made gradually and with a full regard for those interests which their predecessors have called into existence. (Cheers.) So much for the effect, the direct effect, which this change, which is apparently in process of going on, will have upon the Trade, regarded merely as consisting of persons who are the legitimate owners of a recognised property. I think that this change of policy has an even further-reaching effect on the interests of temperance itself. For observe that it is out of the power of these magistrates, whatever their views may be, to touch one class of licence holders whom the temperance reformer, left to himself, would be disposed to deal with in the least merciful fashion—I mean, of course, the beer-houses which came into existence before 1869. Those gentlemen who are desirous apparently of revolutionising the whole distribution of licences throughout the country are prevented by law from touching

the very licence which probably, most of all, would require to come within the purview of any fair and comprehensive measure dealing with this subject. It cannot be good for temperance. But there is a much more far-reaching effect which I think is likely to be produced by what is occurring. I put aside the view of those who think it either desirable, or, if desirable, practicable, to prevent the people of this country indulging moderately in alcoholic liquors. I regard that as an absolutely impossible state of things. I do not know that I should desire it if it could be carried out, and I am perfectly sure it could not be carried out. There is no northern community in the world which has ever consented to abstain wholly from a moderate indulgence in alcoholic liquor, and I doubt if it is possible for us to hope that anything beyond a moderate rate of consumption can ever be established in this country, but putting those aside who regard that as a very meagre settlement of the idea at which we ought to aim, and confining myself to more moderate temperance reformers, among whom I should desire to class myself, surely it must stand to reason that if you make property in licences absolutely insecure no man of position or substance will engage in the Trade. (Cheers.) And surely it follows, if that be true, the next consequence is quite irrefutable—namely, that a trade which must exist will fall into the hands of men who have nothing to lose by misconduct, who run the thing in a manner which may possibly suit their own interests, but which must be inimical to the public interest ; and by driving out all men of position and responsibility from the holding of licences you will inflict upon them—not merely a great hardship upon the classes who desire to make use of respectable and well-conducted houses—but you will inflict the greatest injury upon the cause of temperance itself. (Hear, hear.) I therefore look with the utmost alarm to anything which would absolutely drive out all the good men, and leave the work which has to be done and will be done by somebody, legislate how you will, to men who have neither character, nor money, nor position to lose. (Hear, hear.) I do not know, gentlemen, that you will expect me to say anything more upon a question of policy, nor have any of you asked me—and, I think, rightly and

wisely—what precise course it is the business of the Government to take at the present time. Remember, in the first place, the Quarter Sessions may reverse, and I hope will reverse, at all events, the most extravagant of the decisions, if that is the proper word to apply to them, and I fear it is, which had been given at the Brewster Sessions. (Cheers.) I hope that may be the case, but, putting that contingency out of view, all whom I am addressing are aware that this problem has only really reached its acute stage within the last month. Certainly it never came before me in any prominent way until within a very few weeks. The problem itself is one which is part of a great question, which has been the perplexity of Administration after Administration, and battleground of one party fight after another party fight, and it is impossible that the Government can be asked to deal with a situation thus unexpected, thus novel, thus serious, and thus intrinsically and inherently difficult at a moment's notice; and while, therefore, I appreciate the reticence which has characterised all the speakers this afternoon, as regards any cross-examination of my colleagues or myself as to the course which we think Parliament ought to take in the matter, I hope you will content yourself with the statement that what has occurred appears to us to be in many cases, however well intended, but little short in its practical effect of unjust confiscation of property, and that to that unjust confiscation of property it is impossible that either Parliament or His Majesty's Government can remain indifferent. (Loud Cheers.)

Lord Wemyss again brought forward his Licensing Acts Amendment Bill which has been alluded to above; and upon his moving the second reading on July 14, 1903, the Lord Chancellor said:—

> "He hoped the noble earl would not divide the House. It was the intention of His Majesty's Government to introduce a Bill upon the subject as early as possible in the approaching session; and the only result of pressing the present motion would be to commit the House prematurely."

Lord Wemyss, having thus secured a statement of the intentions of the Government, withdrew the Bill.

In the House of Commons a Bill, entitled the Licensing Law (Compensation for Non-renewal) Bill, was introduced by Mr. Butcher, K.C. The following memorandum which was prefixed to the Bill will sufficiently explain its objects:—

"The object of this Bill is to provide compensation in all cases in which licences are suppressed for reasons other than the misconduct of the licence holder, and in that way to facilitate a reduction in the number of the licensed houses in the country.

"The licences which may be suppressed with compensation under this Bill will include the licences of the ante-1869 beerhouses.

"The amount of the compensation is to be the fair value of the licence and the good-will, and the compensation is to be provided out of contributions from the trade, with a provision for reducing the amount of such contribution out of any moneys which may be provided for the purpose by Parliament out of the direct taxation of intoxicating liquors.

"For the purposes of this Bill the country is treated as divided into areas—viz., the counties and the county boroughs. A compensation fund is to be established in each area, and a 'Compensation Authority' will collect and distribute the compensation payable within such area. The compensation authority for each county is the standing joint-committee, and for each borough a similarly constituted body.

"The compensation authority in each area will determine in every year the sum then available for providing compensation within the area, and the value of the licences to be suppressed in that year in that area on grounds other than misconduct will not exceed the amount of the sum then available for compensation.

"In order to distribute the suppression of licences fairly within the area, it is proposed that the authority for suppressing licences on grounds other than misconduct (in this Bill called

'The Reduction Authority') shall in each county be the county licensing committee, and shall in each county borough be the borough licensing committee.

"Special provisions are made for ascertaining the value of the licence (including the goodwill), and for providing the compensation fund.

"The value of the licence and goodwill will consist of two parts—viz., (1) the value to the owner of the licensed premises, and (2) the value to the licence holder. These values are to be the values as declared triennially by the owner and licence holder respectively with a provision, in case the compensation authority is dissatisfied with such declared values, for determining the values by a single arbitrator.

"The compensation fund (apart from any sums which may be provided by Parliament as above mentioned) will be provided out of annual contributions from the following persons within the area—viz., (1) owners of licensed premises and licence holders; (2) occupiers of hotels and restaurants; and (3) persons to whom new licences are granted. The annual contributions will be as follows.—(1) from owners and licence holders, one-third per cent. of the value of the licence or goodwill to such persons respectively; (2) from occupiers of hotels and restaurants, one-sixteenth of the annual rateable value of their premises; and (3) from holders of new licences an annual sum, the amount of which is to be fixed at the time of granting the new licence."

The Second Reading of this Bill was moved by Mr. Butcher on April 24th, when it was carried by 266 votes to 133—a majority of exactly two to one. No opportunity was found for carrying the Bill further, but it undoubtedly served a useful purpose in directing attention to the question, and in indicating to the Government the large amount of support in the House for some such Bill.

We now come to the present year, 1904. In the King's Speech at the opening of the session the Government announced, in accord-

ance with their promise, that a Bill would be introduced dealing with the question of licensing, and on the 20th April it was introduced accordingly and read a first time. This Bill in the form in which it finally passed into an Act will be found printed at length in a subsequent part of this work, together with a full commentary on the various sections. The Bill was subjected to very considerable discussion in both Houses, and a great many amendments were moved. It does not appear necessary, however, to do more here than to refer to two salient and important questions, namely, the time limit and the arrangements for the grant of new licences. As might be expected, those who were opposed to the very moderate measure of justice embodied in the Bill were extremely anxious to introduce some sort of time limit, though there was little agreement as to the length of such limit, proposals being made varying from seven years to thirty years. The objections to all such proposals, both from the point of view of justice to the trade and of the public interest, were overwhelming. Had it been proposed to give the compensation out of the ordinary public revenue, something might have been said for such a proposal, provided always that the time limit was sufficiently long to give some sort of equivalent for the customary right of renewal, which has long been recognised in practice and which was, in fact, the basis of the Bill. But when the trade was required to find its own compensation by means of a new special tax upon licensed premises, the proposal became a monstrous one. The result would have been that some houses would have paid the new tax for the whole period until the time limit was reached, say 30 years, at the end of which time the licence might be swept away and nothing whatever paid. On the other hand a precisely similar house, possibly in the same street, might, after paying its tax for a few years, have been abolished on payment of full compensation. Nothing more is needed to show the outrageous unfairness of such a proposal.

But there is the further objection that the existing difficulty would not be got rid of. The whole origin of the Bill was the conflict between the legal right of the justices to refuse licences in

their absolute discretion and the moral right which all men, except fanatical teetotallers, had come to regard as belonging to the owners and tenants of licensed property by reason of the customary renewal of licences throughout a long course of years. No one can reasonably argue that this conflict would be any the less acute at the end of thirty, or forty, or fifty years than it is to-day. The situation of to-day would be revived after a greater or less interval, and the moral rights of the persons interested would be rather increased than diminished by reason of the fact that taxation had been paid for a large number of years of which others had received the benefit.

So much for the question of justice to the trade. The public interests would also have suffered. As the end of the time limit approached the position of a publican would have become so precarious that it would have been difficult indeed to find substantial men to take the responsibility. Not only so, but ordinary fair minded men, such as we believe the great bulk of the justices to be, would not feel justified in demanding those reasonable alterations and improvements in licensed property which they now require for the benefit of the public. The inevitable result would have been that for many years the class of men engaged in the trade would have undergone a progressive deterioration, and the condition of the premises occupied by them would have gone from bad to worse.

Section 4 of the Act, which deals with the question of new licences, underwent a very serious change after the introduction of the Bill into the House of Commons. According to the original draft, conditions might be imposed on the grant of a new licence as to the surrender of other licences, or payment in respect of the new licence, either in a single sum or an annual sum, and such new licence, when granted, would have been entitled to share in the compensation money if it was afterwards suppressed. There was some justification for this proposal as it has been recognised very widely that where the State creates a purely artificial monopoly as it has done in the liquor trade, it is not unreasonable that those who are admitted to a share of that monopoly should make some kind of payment for it. This scheme, however, as will be seen by reference

to section 4 of the Act, was weakly sacrificed by the Government during the progress of the Bill, and a wholly new scheme was substituted with a view of conciliating those enemies of the liquor trade who are admittedly opposed to all sale of intoxicating drink, and whose opposition to the Act and the Government that passed it will certainly not be lessened by one whit because of the concession which has been made. The effect must be to destroy all feeling of security in the holders of these new licences. They are to exist for seven years only, and are to have no claim to renewal or compensation, although the justices are to exact from those to whom they are granted such payments (necessarily heavy) as will secure to the public the whole of the monopoly value. In view of the expensive buildings and fittings which are required for the proper conduct of a publican's business, the result must be that the new licences will either be granted to unsuitable premises, or the present system of renewals must be substantially re-established, so that in the course of a generation or two there will be a new compensation difficulty, and a new Act will be required to deal with it.

Turning from a consideration of the past to the future of the compensation question, it is to be hoped that in the next Session the measure of justice accorded to the liquor trade in England, inadequate though it may be, will be extended to Scotland. There is nothing in the nature of the Scottish system of licensing, although it is very different in many respects from the English, to justify a denial to the trade in Scotland of the same measure as has been granted in England. It appears from a letter of Messrs. Wylie & Robertson, recently published in the *Scotsman*, that Mr. Balfour has given an undertaking that this matter shall be considered by the Government, and, although he declines to make "any forecast as regards next year's legislation," it is to be hoped that another Session will not be allowed to pass without this important question being dealt with. Ireland, fortunately, needs no legislation, since the arbitrary powers which the magistrates possess in England and Scotland do not exist in that country, as has already been fully explained in this work.

VI.—Licensing Act, 1904, 4 Edw. VII., Ch. 23.

An Act to amend the Licensing Acts, 1828 to 1902, in respect to the extinction of Licences and the grant of new Licences. [15th August, 1904.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Reference to quarter sessions of questions as to renewal of licences in certain cases.

1.—(1) The power to refuse the renewal of an existing on licence, on any ground other than the ground that the licensed premises have been ill-conducted or are structurally deficient or structurally unsuitable, or grounds connected with the character or fitness of the proposed holder of the licence, or the ground that the renewal would be void, shall be vested in quarter sessions instead of the justices of the licensing district, but shall only be exercised on a reference from those justices, and on payment of compensation in accordance with this Act.

In every case of the refusal of the renewal of an existing on licence by the justices of a licensing district, they shall specify in writing to the applicant the grounds of their refusal.

By section 9 (1) a transfer of a licence is placed in the same position as a renewal, so that the word "renewal" in this section is to be read as including a transfer. By section 9 (4) (at end) the expression "transfer" means a transfer under section 4 or 14 of the Alehouse Act, 1828. The sections referred to contain some lengthy provisions which it does not seem necessary to set out in full, providing for the transfer of licences in cases where the licence-holder may die, or become incapable, or become bankrupt, or the house is about to be pulled down for a public

improvement, or has by fire, tempest, or other unforeseen and unavoidable calamity, been rendered unfit for occupation, and in some other cases. The power of the justices under the Act will therefore not arise on an application for a removal under section 50 of the Licensing Act, 1872, which makes provision for the removal of licences "from one part of a licensing district to another part of the same district, or from one licensing district to another licensing district within the same county."

The expression "an existing on licence" is defined by section 9 (4) as "an on licence in force at the date of the passing of this Act, and includes a licence granted by way of renewal from time to time of a licence so in force, whether such licence continues to be held by the same person, or has been or may be transferred to any other person or persons"; and an "on licence" means "a licence for the sale of any intoxicating liquor (other than wine alone or sweets alone) for consumption on the premises."

Section 9 (4) further provides that where a provisional licence has been granted before the passing of the Act under section 22 of the Licensing Act, 1874, and is afterwards declared final, the licence shall be deemed to be an existing on licence though not in force at the passing of the Act. Section 22 of the Licensing Act, 1874, was passed for the purpose of enabling persons who were about to erect premises suitable for use as licensed premises to know beforehand whether a licence would be granted to them, and it enabled the justices, on the plans being submitted to them, to make a provisional grant of a licence to be afterwards declared final "if the justices are satisfied that the house has been completed in accordance with such plans as aforesaid, and are also satisfied that no objection can be made to the character of the holder of such provisional licence."

By section 9 (2) the justices may treat the premises as "ill-conducted" if "the holder of the licence has persistently and unreasonably refused to supply suitable refreshment (other than intoxicating liquor) at a reasonable price," or if "the holder

of the licence has failed to fulfil any reasonable undertaking given to the justices on the grant or renewal of the licence."

It will be observed that the power to refuse a renewal under this section is to be vested in quarter sessions, and by section 8 (1) the area of quarter sessions for any county includes "any borough (not being a county borough) or any part thereof which is locally situated in that county." By section 8 (2) in a county borough the powers of quarter sessions are to be exercised by "the whole body of justices acting in and for the borough"; and by section 8 (3) the City of London is to be treated as a county borough. Quarter sessions in boroughs (which consist of the recorder sitting as sole judge) have not had, and under this Act will not have, any jurisdiction in licensing matters; but the justices of a county borough (all other boroughs being under the jurisdiction of the quarter sessions for the county) will have the same powers as the court of quarter sessions in a county. The power to refuse a renewal under this Act in a county borough *may* be exercised by a committee to whom the "whole body of justices acting in and for the borough" have delegated their powers and duties in accordance with section 5 (2) of the Act. In counties all such questions, together with confirmations of new licences, will be dealt with by a committee to whom, by the same section, quarter sessions *shall* delegate their powers.

(2) Where the justices of a licensing district on the consideration by them, in accordance with the Licensing Acts, 1828 to 1902, of applications for the renewal of licences are of opinion that the question of the renewal of any particular existing on licences requires consideration on grounds other than those on which the renewal of an existing on licence can be refused by them, they shall refer the matter to quarter sessions, together with their report thereon, and quarter sessions shall consider all reports so made to them, and may, if they think it expedient, after giving the persons interested in the licensed premises, and,

unless it appears to quarter sessions unnecessary, any other persons appearing to them to be interested in the question of the renewal of the licence of those premises (including the justices of the licensing district), an opportunity of being heard, and subject to the payment of compensation under this Act, refuse the renewal of any licence to which any such report relates.

Payment of compensation on non-renewal of licence.

2.—(1) Where quarter sessions refuse the renewal of an existing on licence under this Act, a sum equal to the difference between the value of the licensed premises (calculated as if the licence were subject to the same conditions of renewal as were applicable immediately before the passing of this Act, and including in that value the amount of any depreciation of trade fixtures arising by reason of the refusal to renew the licence), and the value which those premises would bear if they were not licensed premises, shall be paid as compensation to the persons interested in the licensed premises.

(2) The amount to be so paid shall, if an amount is agreed upon by the persons appearing to quarter sessions to be interested in the licensed premises and is approved by quarter sessions, be that amount, and in default of such agreement and approval shall be determined by the Commissioners of Inland Revenue in the same manner and subject to the like appeal to the High Court as on the valuation of an estate for the purpose of estate duty, and in any event the amount shall be divided amongst the persons interested in the licensed premises (including the holder of the licence) in such shares as may be determined by quarter sessions :

Provided that in the case of the licence holder regard shall be had not only to his legal interest in the premises

or trade fixtures but also to his conduct and to the length of time during which he has been the holder of the licence, and the holder of a licence, if a tenant, shall (notwithstanding any agreement to the contrary) in no case receive a less amount than he would be entitled to as tenant from year to year of the licensed premises.

This section was very materially modified in the course of the passage of the Bill through Parliament, especially in regard to the rights of the holder of a licence and the power of the landlord and tenant of licensed premises to agree as to the division of the compensation money. The phrase "calculated as if the licence were subject to the same conditions of renewal as were applicable immediately before the passing of this Act" requires some little explanation. The corresponding words in the Bill as originally introduced were "calculated as if this Act had not passed"; and it was suggested that this might mean that the persons interested in premises of which the licence was taken away should not get the benefit of any increase of trade which might possibly have been caused through the suppression of other houses under the Act. The words as amended make it clear that the compensation money will not be reduced merely because some of the trade may have come from suppressed houses. During the progress of the Bill through the House of Commons a paper was drawn up by the Board of Inland Revenue, and laid on the table of the House, which shows that the practice of the Board, in valuing for the purpose of estate duty in accordance with section 7 (5) of the Finance Act, 1894, is to estimate the market value of the property, and this same method is directed to be followed in determining the amount to be paid under the Act. It therefore appears that the words above referred to were not intended to cut down the value below the market value, but merely to prevent a possible claim to compensation on some new basis owing to the new security

given by the Act. The statement by the Inland Revenue is as follows :—

"There is no special basis provided by statute for valuing licensed houses for the purpose of estate duty, and accordingly the valuation of licensed houses comes under the general rule applicable to all property, which is laid down by subsection (5) of s. 7 of the Finance Act, 1894, namely :—

'The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased.'

"The effect, therefore, is that the ordinary rules of valuation apply.

"The manner in which the value of an estate, including a licensed house, is ascertained by the Board of Inland Revenue for the purposes of estate duty is, under section 7 (8) of the Act of 1894, such as the Board choose to adopt, and for the purpose of ascertaining that value they may require accounts, statements, and forms to be delivered and verified on oath, and may also require the production of books and documents. (See section 8 (5), (14) of the Act of 1894.)

"The manner in which compensation under the Bill is determined will follow these lines, subject to the adoption of the basis of valuation laid down by subsection (1) of clause 2 of the Bill—namely, the difference between the two values set out in that subsection."

Subsection 2 contains the provisions for the division of the compensation amongst the persons interested, including special provisions for the protection of the licence holder. It is to be presumed that, subject to these last mentioned special provisions, the compensation money will be divided in proportion to the several interests. It is somewhat remarkable that the Act merely says that "the amount shall be divided amongst the persons interested in the licensed premises," but does not include any words indicating that the division is to be pro-

portional. This would, no doubt, be held by the courts to be a necessary legal implication. Some doubt may arise as to whether the licence holder is always to be compensated, even if he has no legal interest in the premises. It might be argued from the words "including the holder of the licence" that this is what is intended, but the following proviso rather negatives this view. We there find that regard shall be had *not only* to the legal interest of the licence holder, which implies that he must in order to be compensated have *some* legal interest; and in the latter part of the proviso the words "if a tenant" seem to be intended to exclude the case of a mere manager, who of course has no legal interest in the premises. The general result appears to be (though the question is by no means free from doubt) that the licence holder is to be compensated for his full legal interest, whatever that may be, "notwithstanding any agreement to the contrary"; that he may also get something more in consideration of "his conduct" and "the length of time during which he has been the holder of the licence"; and that, however small his interest may be, so long as he has some (for instance, that of a tenant at will), he shall not receive "a less amount than he would be entitled to as a tenant from year to year of the licensed premises." This will obviously work out very unfairly to the landlord in many cases, inasmuch as his compensation will be cut down by exactly the amount which quarter sessions may see fit to give to the licence holder in excess of the value of his legal interest, and in the case of a man who has held the same house for a great number of years, and whose conduct has always been exemplary, this may amount to a very substantial sum.

(3) If on the division of the amount to be paid as compensation any question arises which quarter sessions consider can be more conveniently determined by the county court, they may refer that question to the county

court in accordance with rules of court to be made for the purpose.

It is most unfortunate, in view of the difficult questions of law that are likely to arise (such as those mentioned in the preceding note, and disputes as to who is a "tenant"), that the Government refused all amendments to give an appeal to the High Court on the division of the compensation, though they had already provided for an appeal to that Court on the question of the total amount of compensation.

(4) Any costs incurred by the Commissioners of Inland Revenue on an appeal from their decision to the High Court under this section shall, unless the High Court order those costs to be paid by some party to the appeal other than the Commissioners, be paid out of the amount to be paid as compensation.

Financial provisions.

3.—(1) Quarter sessions shall, in each year, unless they certify to the Secretary of State that it is unnecessary to do so in any year, for the purposes of this Act impose, in respect of all existing on licences renewed in respect of premises within their area, charges at rates not exceeding, and graduated in the same proportion as, the rates shown in the scale of maximum charges set out in the First Schedule to this Act.

(2) Charges payable under this section in respect of any licence shall be levied and paid together with and as part of the duties on the corresponding excise licence, but a separate account shall be kept by the Commissioners of Inland Revenue of the amount produced by those charges in the area of any quarter sessions, and that amount shall in each year be paid over to that quarter sessions in accordance with rules made by the Treasury for the purpose.

(3) Such deductions from rent as are set out in the Second Schedule to this Act may, notwithstanding any agreement to the contrary, be made by any licence holder who pays a charge under this section, and also by any person from whose rent a deduction is made in respect of the payment of such a charge.

(4) Any sums paid under this Act to quarter sessions in respect of the charges under this section, or received by quarter sessions from any other source for the payment of compensation under this Act, shall be paid by them to a separate account under their management, and the moneys standing to the credit of that account shall constitute the compensation fund.

(5) Any expenses incurred by quarter sessions in the payment of compensation under this Act, or otherwise in the exercise of their powers or the performance of their duties under this Act, and such expenses of the justices of the licensing district incurred under this Act as quarter sessions may allow, shall be paid out of the compensation fund, and quarter sessions, in the exercise of their powers under this Act, shall have regard to the funds available for the purpose.

Quarter sessions may, with the consent of a Secretary of State, borrow in accordance with rules made under this Act, on the security of the compensation fund, for the purpose of paying any compensation payable under this Act.

Provisions as to new licences.

4.—(1) The power of the County Licensing Committee to confirm new licences, and any other power of that committee shall be transferred to quarter sessions.

By this section the power of the county licensing committee to confirm new licences is transferred to quarter sessions, and as

already mentioned in the note to section 1 (1) this power must be delegated in accordance with section 5 (2) to a committee appointed by quarter sessions. The effect of the words "any other power of that committee" will be to further transfer to quarter sessions the powers of the county licensing committee under section 32 of the Licensing Act, 1874. Under that section any collection of houses adjacent to an urban sanitary district shall be deemed to be a part of a town "after it has been declared so to be by an order of the county licensing committee"; and "'populous place' means any area with a population of not less than one thousand, which by reason of the density of such population the county licensing committee may by order determine to be a populous place." The county licensing committee is required to revise its orders from time to time in accordance with each census. The county licensing committee also has power to appoint county justices on a joint committee for the confirmation of licences in certain boroughs, as to which see the note to section 5 of this Act.

(2) The justices, on the grant of a new on licence, may attach to the grant of the licence such conditions, both as to the payments to be made and the tenure of the licence and as to any other matters, as they think proper in the interests of the public; subject as follows:—

(a) Such conditions shall in any case be attached as, having regard to proper provision for suitable premises and good management, the justices think best adapted for securing to the public any monopoly value which is represented by the difference between the value which the premises will bear, in the opinion of the justices, when licensed, and the value of the same premises if they were not licensed: Provided that, in estimating the value as licensed premises of hotels or

other premises where the profits are not wholly derived from the sale of intoxicating liquor, no increased value arising from profits not so derived shall be taken into consideration :

(b) The amount of any payments imposed under conditions attached in pursuance of this section shall not exceed the amount thus required to secure the monopoly value.

(3) The justices may, if they think fit, instead of granting a new on licence as an annual licence, grant the licence for a term not exceeding seven years, and where a licence is so granted for a term—

(a) Any application for a re-grant of the licence on the expiration of the term shall be treated as an application for the grant of a new licence, not as an application for the renewal of a licence, and during the continuance of the term the licence shall not require renewal : and

(b) Any transfer of the licence shall, subject to any conditions attached thereto on the grant, have effect for the remainder of the term of the licence, and may be granted at a general annual licensing meeting as well as at special sessions, and any reference to special sessions in any enactment relating to transfers or protection orders shall include a reference to the general annual licensing meeting.

(4) The amount of any payments made in pursuance of any conditions under this section shall be collected and dealt with in the same manner as the duties on local

taxation licences within the meaning of section twenty of the Local Government Act, 1888.

By section 20 of the Local Government Act, 1888, the proceeds of the duties on local taxation licences collected in each county and county borough in England and Wales are to be paid over to the council of the county or county borough.

(5) A licence granted for a term under this section may (without prejudice to any other provisions as to forfeiture) be forfeited, if any condition imposed under this section is not complied with, by order of a court of summary jurisdiction, made on complaint, or, if the holder of the licence is convicted of any offence committed by him as such, by the court by whom he is convicted, but where a licence is so forfeited the owner of the licensed premises shall have all the rights conferred on owners by section fifteen of the Licensing Act, 1874.

By section 15 of the Licensing Act, 1874, where a licensed person becomes personally disqualified, or has his licence forfeited under that section, "there may be made by or on behalf of the owner of the premises an application to a court of summary jurisdiction for authority to carry on the same business on the same premises until the next special sessions for licensing purposes, and a further application to such next special sessions for the grant of a licence in respect of such premises, and for this purpose the provisions contained in the Intoxicating Liquor Licensing Act, 1828 [*i.e.*, in section 14 of the Alehouse Act, 1828, as to which see note to section 1 (1) of this Act], with respect to the grant of a temporary authority and to the grant of licences at special sessions shall apply as if the person convicted had been rendered incapable of keeping an inn, and the person applying for such grant was his assignee." 37 & 38 Vict. c. 49.

(6) On the confirmation of a new on licence, the confirming authority may, with the consent of the justices authorised to grant the licence, vary any conditions attached to the licence under the provisions of this section.

5.—(1) Quarter sessions may, if they think fit, divide their area into districts for the purposes of this Act, and in that case this Act shall operate as if those districts were separate areas for the purposes of this Act under the same quarter sessions.

(2) Quarter sessions may delegate any of their powers and duties under this Act to a committee appointed in accordance with rules made by them under this section, and, except in a county borough, shall so delegate their power of confirming the grant of a new licence, and of determining any question as to the refusal of the renewal of a licence under this Act and matters consequential thereon, and county licensing committees shall cease to be appointed under the Licensing Act, 1872.

Division of area and appointment of committees for purposes of Act.

It is to be noted that by this section a distinction is drawn between a county borough and a county in regard to the delegation of powers, such distinction being doubtless due to the fact that the number of justices available will usually be less in a county borough than in a county. Quarter sessions in a county borough (meaning according to section 8 (2) "the whole body of justices acting in and for the borough") *may* but need not delegate their powers and duties. Quarter sessions in a county *must* delegate their powers of confirming the grant of a new licence, and of determining any question of refusal of renewal under this Act, and may also delegate their other powers. These latter will be found referred to in the note to section 4 (1) of this Act. The only "powers and duties under this Act" in a county borough are apparently those relating to refusal of renewals where compensation is payable.

(3) Quarter sessions may make rules to be approved by a Secretary of State, for the mode of appointment of committees under this section, and for the number, the quorum, and (so far as procedure is not otherwise provided for) the procedure of those committees.

(4) The justices of a licensing district being a county borough shall exercise their powers under the Licensing Acts, 1828 to 1902, as to the renewal of licences through the borough licensing committee appointed under section thirty-eight of the Licensing Act, 1872, and such number as the whole body of justices acting in and for the borough determine shall be substituted for seven as the maximum number, and seven shall be substituted for three as the minimum number, of that committee. 35 & 36 Vict. c. 94.

It is provided by section 38 of the Licensing Act, 1872, that in boroughs in which there are "ten justices acting in and for such borough or upwards" the justices shall, for the purpose of dealing with applications for new licences, annually appoint from among themselves "a committee of not less than three nor more than seven in number," the quorum being three. By the present Act the power of the justices as to the renewal of licences is (in county boroughs only) also vested in this committee, while the minimum number is raised from three to seven, and the maximum number from seven to "such number as the whole body of justices acting in and for the borough determine." The quorum presumably remains unaltered.

(5) The justices of any borough, not being a county borough but having a separate commission of the peace, shall be entitled to appoint one of their number to act, with reference to the determination of any question as to the refusal of the renewal of a licence under this Act and any matters consequential thereon, on the committee appointed

under this section by quarter sessions, and for those purposes any justice so appointed shall be deemed to be an additional member of the committee.

The general effect of the Act, and more particularly of this section, is to introduce still further complication into what was already a very complicated subject. In one respect, and in one respect only, a slight simplification has been introduced, since the borough licensing committee in county boroughs will now deal with the renewal of licences as well as with the granting of new licences. This alteration has, however, in itself introduced a new complication, because county boroughs are thereby separated from the other boroughs together with which they formerly made one class. It may be convenient to set out in this place the system of dealing with licences at their various stages and in various places :—

New Licences.

Applications for new licences have to be made as under :—

In boroughs not having ten acting justices, to the whole body of justices. (Alehouse Act, 1828, sec. 1 ; Licensing Act, 1872, sec. 38.)

In boroughs having ten or more acting justices (not being county boroughs), to a committee of the borough justices consisting of not less than three nor more than seven justices. (Licensing Act, 1872, sec. 38.)

In county boroughs, to a committee of the borough justices consisting of not less than seven nor more than the maximum number of justices determined by the justices. (Licensing Act, 1872, sec. 38 ; Licensing Act, 1904, sec. 5 (4).)

In counties, to the justices of the petty sessional division. (Alehouse Act, 1828, sec. 1.)

Confirmation.

New licences require to be confirmed as follows :—

In boroughs not having ten acting justices, by a joint committee consisting of three justices of the county and three justices of the borough. The three county justices are appointed by quarter sessions or by a committee appointed by them, and the three borough justices are appointed by the justices of the borough. When there are not three borough justices, the number is to be made up by county justices, who are to be appointed in the same manner as the three above mentioned county justices. (Licensing Act, 1872, sec. 38; Licensing Act, 1874, sec. 21; Licensing Act, 1904, secs. 4 (1), 5 (2).)

In boroughs having ten or more acting justices (not being county boroughs), } by the whole body of justices.
In county boroughs, } (Licensing Act, 1872, sec. 38.)

In counties, by a committee of quarter sessions. (Licensing Act, 1872, sec. 37; Licensing Act, 1904, secs. 4 (1), 5 (2).)

Renewals.

The justices to whom applications for renewals have to be made are the same as those dealing with new licences, except that

In boroughs having ten or more acting justices (not being county boroughs) such applications are heard by the whole body of justices, and not by the committee dealing with applications for new licences. (Alehouse Act, 1828, sec. 1.)

Appeals.

Where an application for a renewal is refused upon any of the grounds enumerated in section 1 (1) of this Act, an appeal lies in all cases to the quarter sessions for the

county, whether the case arises in a county or a borough. (Alehouse Act, 1828, sec. 27.)

References to Quarter Sessions under this Act.

Where an application for a renewal is referred to quarter sessions under section 1 of this Act it will be dealt with as follows :—

If referred by the borough licensing committee of a county borough, by the whole body of justices of the borough, or by a committee appointed by them. (Licensing Act, 1904, secs. 5 (2), 8 (2).)

If referred by any justices other than the borough licensing committee of a county borough, by a committee of quarter sessions, to whom shall be added in the case of "any borough, not being a county borough, but having a separate commission of the peace" one justice appointed by the justices of the borough. (Licensing Act, 1904, secs. 5 (2), 5 (5), 8 (1).)

Rules. **6.**—A Secretary of State may make rules for carrying into effect this Act, and may by those rules amongst other things—

(a) provide for the provisional renewal of licences which are included in reports of the justices of a licensing district under this Act, and for consultation with those justices as to their reports, and for the time and manner of the consideration of those reports and of the payment of compensation ; and

(b) provide for the enforcement of any security given for money borrowed, and for the time, not exceeding fifteen years, within which money borrowed is to be replaced ; and

(c) regulate the management and application of the compensation fund and the audit of the accounts of quarter sessions ; and

(d) provide for constituting, where requisite, committees of quarter sessions standing committees, and for the employment of officers for the purpose of this Act; and

(e) regulate the procedure of quarter sessions on the consideration of the reports of justices of a licensing district under this Act and on any hearing under this Act with reference to the refusal of the renewal of on licences or the approval or division of the amount to be paid as compensation; and

(f) provide for the authentication of any documents on behalf of quarter sessions or their committees.

Returns to Secretary of State.

7.—Quarter sessions, with respect to their own action and that of the justices of licensing districts under this Act, and the confirming authority, with respect to new licences granted under this Act, shall in each year make such returns to the Secretary of State as the Secretary of State may require.

Authorities and areas.

8.—(1) The area of quarter sessions for a county shall for the purposes of this Act include any borough (not being a county borough) or any part thereof which is locally situated in that county.

(2) This Act shall apply to a county borough as if it were a county, with the substitution for quarter sessions of the whole body of justices acting in and for the borough.

(3) The City of London for the purposes of this Act shall be deemed to be a county borough.

This section has already been referred to in the notes to sections 1 (1) and 5 (2). The general effect of it is that in a county borough (which includes for this purpose the City of London) the powers of quarter sessions are exercisable by the whole body of justices acting in and for the borough; and in a

county (including every borough not being a county borough) by the quarter sessions for the county.

Application of Act to special cases and interpretation.

9.—(1) The provisions of this Act shall apply to the transfer of an existing on licence as they apply to the renewal of an existing on licence, with the substitution of transfer for renewal.

(2) If the justices of a licensing district refuse to renew an existing on licence on the ground that the holder of the licence has persistently and unreasonably refused to supply suitable refreshment (other than intoxicating liquor) at a reasonable price, or on the ground that the holder of the licence has failed to fulfil any reasonable undertaking given to the justices on the grant or renewal of the licence, the justices shall be deemed to have refused the licence on the ground that the premises had been ill-conducted:

Provided that where the justices, on an application for the renewal of an existing on licence, ask the licence holder to give an undertaking as aforesaid, they shall adjourn the hearing of the application, and cause notice of the required undertaking to be served upon the registered owner of the premises, and give him an opportunity of being heard.

By this section the breach of an undertaking given to the justices is placed upon a somewhat new footing. Such an undertaking is under the existing law, and will remain under this Act, void in the sense that the licence holder cannot be criminally punished for the breach of it, but there has always been a certain amount of doubt whether the justices could treat the breach of an undertaking as a ground for refusing to renew the licence. This has not been hitherto a matter of any great practical importance, since, as Lord Bramwell pointed out in *Sharp* v. *Wakefield*, "the magistrates have a discretion to refuse, they are not bound to state their reason, and, therefore, their

decision cannot be questioned," on the supposition, of course, that they have acted in good faith and without bias. Now, however, that they are to be limited to certain grounds (that is, where no compensation is to be paid) and those grounds must be specified, this question is likely to assume greater importance, and, in the absence of some statutory enactment, might have given rise to considerable litigation. It is now settled by this Act that a breach of an undertaking amounts to misconduct. The same applies to the failure to supply refreshments (other than intoxicating liquors) at a reasonable price, which is not an offence at law, except in the case of an inn-keeper.

(3) Section nineteen of the Wine and Beerhouse Act, 1869, and section seven of the Wine and Beerhouse Amendment Act, 1870, are hereby repealed, and, in the application of this Act to licences to which the said section nineteen extends, the grounds mentioned in section eight of the Wine and Beerhouse Act, 1869, shall be substituted for the grounds mentioned in this Act as the grounds on which the power to refuse the renewal of an existing on licence is reserved to the justices of a licensing district.

32 & 33 Vict. c. 27.
33 & 34 Vict. c. 29.

The effect of the various sections referred to here is that where, on the 1st May, 1869, there was in force a licence "with respect to any house or shop for the sale by retail therein of beer, cider, or wine, to be consumed on the premises," which licence has been renewed from time to time, whether it continues to be held by the same person, or has been or may be transferred to any other person or persons, it is not lawful for the justices to refuse a licence except upon one or more of the following grounds :—

"(1) That the applicant has failed to produce satisfactory evidence of good character.

"(2) That the house or shop in respect of which a licence is sought, or any adjacent house or shop owned or occupied

by the person applying for a licence, is of a disorderly character, or frequented by thieves, prostitutes, or persons of bad character.

"(3) That the applicant having previously held a licence for the sale of wine, spirits, beer, or cider, the same has been forfeited for his misconduct, or that he has through misconduct been at any time previously adjudged disqualified from receiving any such licence, or from selling any of the said articles.

"(4) That the applicant, or the house in respect of which he applies, is not duly qualified as by law is required."

These provisions are now repealed, so that for the future such licences may be refused on any ground. Their privileges are, however, preserved, inasmuch as unless they are refused upon one or more of the grounds upon which they could have been refused before the passing of the Act compensation will have to be paid. Houses to which such licences attach will, therefore, have two advantages. The grounds on which their licences can be refused without compensation will be much narrower than those in respect to which ordinary licences can be refused, and, if they are refused, compensation will be payable on a higher scale since these houses have acquired a greater market value owing to the privileges attaching to them.

(4) In this Act—

The expression "county" includes any riding, part, or division of a county having a separate commission of the peace and a separate court of quarter sessions; and

The expression "quarter sessions" means, as respects a county, the court of quarter sessions for that county:

Provided that, where quarter sessions have customarily been held separately by adjournment or otherwise for any part of a county as defined

by this Act, the Secretary of State may by order, on the application of the justices sitting at each such separate sessions, constitute for the purposes of this Act any part of the county for which quarter sessions are for the time being so separately held a separate county, and the justices usually sitting at such separate quarter sessions a separate quarter sessions, and make all necessary provisions for the administration of the Act in such a case:

The expression "on licence" means a licence for the sale of any intoxicating liquor (other than wine alone or sweets alone) for consumption on the premises, and the expression "new on licence" shall be construed accordingly; and the expression "existing on licence" means an on licence in force at the date of the passing of this Act, and includes a licence granted by way of renewal from time to time of a licence so in force, whether such licence continues to be held by the same person, or has been or may be transferred to any other person or persons:

Provided that, where a provisional grant and order of confirmation of an on licence has been made before the passing of this Act under section twenty-two of the Licensing Act, 1874, and is subsequently declared to be final under that section, the licence shall, although not in force at the date of the passing of this Act, be deemed to be an existing on licence:

As to provisional licences under section 22 of the Licensing Act, 1874, see note to section 1 (1).

A question that is likely to arise under this section is whether a licence which has been transferred under sections 4 and 14 of

the Alehouse Act, 1828, or has been removed under section 50 of the Licensing Act, 1872 (as to which see note to section 1 (1)), continues to be an "existing on licence." This matter was discussed in Parliament during the consideration of the Bill, and, while it was generally conceded that transfers under the Alehouse Act ought to be protected, there was a considerable body of opinion that removals under the Licensing Act, 1872, should not be. Amendments were put down with the object on the one hand of expressly declaring that these latter removals were included, and on the other hand of declaring that they were not included. Both amendments were rejected, so that a very difficult question of law remains to be subsequently cleared up by litigation.

9 Geo. 4. c. 61.

The expression "transfer" means a transfer under section four or section fourteen of the Alehouse Act, 1828.

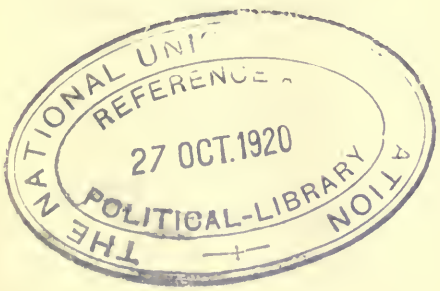
As to the transfers here referred to see note to section 1 (1).

Short title, construction, and commencement.

10.—(1) This Act may be cited as the Licensing Act, 1904, and may be cited and shall be construed as one with the Licensing Acts, 1828 to 1902.

(2) This Act shall come into operation on the first day of January nineteen hundred and five.

(3) This Act shall not extend to Scotland or Ireland.



SCHEDULES.

SCHEDULE I.

Section 3.

SCALE OF MAXIMUM CHARGES.

Annual Value of Premises to be taken as for the purpose of the Publican's Licence Duty.			Maximum Rate of Charge.		
£		£	£	S.	D.
	Under	15	1	0	0
15	and under	20	2	0	0
20	,,	25	3	0	0
25	,,	30	4	0	0
30	,,	40	6	0	0
40	,,	50	10	0	0
50	,,	100	15	0	0
100	,,	200	20	0	0
200	,,	300	30	0	0
300	,,	400	40	0	0
400	,,	500	50	0	0
500	,,	600	60	0	0
600	,,	700	70	0	0
700	,,	800	80	0	0
800	,,	900	90	0	0
900	and over		100	0	0

The rate of charge in the case of an hotel or other premises to which sub-section (4) of section forty-three of the Inland Revenue Act, 1880, applies shall be one-third of that charged in other cases, and, in the case of any licensed premises which are certified by the justices of the licensing district on the application of the holder of the licence to be used only as public gardens, picture galleries, exhibitions, places of public or private entertainment, railway refreshment rooms, bona-fide restaurants or eating houses, or for any other

43 & 44 Vict. c. 20.

SCHEDULE I.—*continued.*

purpose to which the holding of a licence is merely auxiliary, such rate, not less than one-third of that charged in other cases, as the justices think proper under the circumstances.

The premises referred to in sub-section (4) of section forty-three of the Inland Revenue Act, 1880, are premises of the value of £50 or upwards where "it shall be proved to the satisfaction of the Commissioners that the premises are structurally adapted for use as an inn or hotel for the reception of guests and travellers desirous of dwelling therein, and are mainly so used;" but the reduced charge will not apply "in case any portion of the premises is set apart and used as an ordinary public-house for the sale and consumption therein of liquors, and the annual value of such portion, in the opinion of the Commissioners, exceeds £25."

SCHEDULE II.

Section 3.

SCALE OF DEDUCTIONS.

A person whose unexpired term does not exceed	1 year	may deduct a sum equal to	100 per cent. of the charge.
	2 years		88 ,,
	3 ,,		82 ,,
	4 ,,		76 ,,
	5 ,,		70 ,,
	6 ,,		65 ,,
	7 ,,		60 ,,
	8 ,,		55 ,,
	9 ,,		50 ,,
	10 ,,		45 ,,
	11 ,,		41 ,,
	12 ,,		37 ,,
	13 ,,		33 ,,

SCHEDULE II.—*continued.*

A person whose unexpired term does not exceed	14 years	may deduct a sum equal to	29	per cent. of the charge.
	15 „		25	„
	16 „		23	„
	17 „		21	„
	18 „		19	„
	19 „		17	„
	20 „		15	„
	21 „		14	„
	22 „		13	„
	23 „		12	„
	24 „		11	„
	25 „		10	„
Exceeds 25 but does not exceed	30 „		7	„
30 „	35 „		6	„
35 „	40 „		5	„
40 „	45 „		4	„
45 „	50 „		3	„
50 „	55 „		2	„
55 „	60 „		1	„

But the amount deducted shall in no case exceed half the rent.

APPENDIX.

The following excellent Summary of the proceedings in Parliament on the Licensing Act, 1904, with the text of the measure, shewing the amendments made during its progress, has been prepared and published by the National Trade Defence Association.

HOUSE OF COMMONS.

BILL INTRODUCED APRIL 20 — The Licensing Bill was introduced in the House of Commons by the Home Secretary on April 20, the Opposition adopting the unusual course of insisting on a full day's debate. The motion that leave be given to introduce the Bill was carried by 314 votes to 147, a majority of 167.

SECOND READING MAY 9—11. — The Second Reading debate commenced on May 9. The Opposition supported the ordinary form of a direct negative, the debate from their side being opened by Mr. BURT. The debate was continued on May 10 and May 11, the majority in favour of the Second Reading being 157.

The Order Paper of the House of Commons was quickly crowded with amendments, and at the commencement of the Committee stage over 45 pages of amendments had been put down. It may here be stated that, so far from this number decreasing as time went on, any decrease arising from amendments having been considered in Commitee was more than filled by new proposals which appeared upon the Paper. The Order Paper on Friday the 1st of July, 1904, the day upon which Mr. BALFOUR'S closure proposal was made, showed no less than 66 pages of amendments.

JUNE 6 & 7 (CLAUSE 1). — The Committee stage commenced on June 6. Four proposed Instructions having been ruled out of order, and a proposal to postpone Clause 1

defeated by a majority of 111, the consideration of Clause 1 in detail was commenced. Mr. ELLIS GRIFFITH endeavoured to introduce a time limit of seven years into the Clause. The amendment proved to be a tactical mistake, but the Opposition were unable to withdraw it, and the Time Limit issue was here debated. Colonel WILLIAMS moved as an amendment to the amendment that the time should be fourteen years. The Government resolutely resisted the suggestion of the introduction of the Time Limit into the Bill, and after two days debate (on June 7) Colonel WILLIAMS' (fourteen years) amendment was rejected by 306 votes to 187, a majority of 119. Mr. ELLIS GRIFFITH'S (seven years) amendment was rejected by 290 votes to 192, a majority of 98.

JUNE 8. (CLAUSE 1.) The proceedings on June 8 were confined to little over half an hour at the evening sitting, the time of the House having been occupied by the Alien's Bill. The subject discussed was the inclusion of off-licenses in the Bill, and as matters stood when the debate was adjourned, the Government had shown an inclination to allow the inclusion of the beer off licenses when there was no considerable trade in other commodities carried on at the same premises.

At this period the Government left the Licensing Bill and went on with other business, and the Committee stage was not resumed until June 27.

JUNE 27. (CLAUSE 1.) On the resumed debate on June 27 on Mr. BOSCAWEN'S amendment to include off-licenses, the Government adopted a different attitude. The Solicitor-General stated that in his view "on" and off-licenses were totally different in their position and history, and that it was not intended to include off-licenses in the measure. The amendment was negatived without a division. A long discussion on the tied house question followed, arising on an amendment moved by Mr. WHITLEY, which would have established as one of the grounds on which a license could be refused without compensation the

existence of conditions requiring the license-holder to purchase from a particular firm or firms. On a division the amendment was rejected by 271 to 172, a majority of 99. Mr. H. LEWIS moved an amendment to limit Clause 1 to licenses in force on the 25th day of June 1904. *The Government accepted* the proposition in the following form:—To insert after "license" in line 5 "*existing at the date of the passing of this Act.*" The effect of this amendment was to place the question of new licenses outside the province of the compensation proposals of Clause 2. An amendment, moved by Mr. HERBERT ROBERTS, to the effect that only licenses which had been in existence ten years prior to this Bill should come under its provisions for compensation, &c., was rejected by 245 to 143, a majority of 102. The question of tied houses was again raised in an amendment moved by Mr. Moss and added to by Mr. LLOYD GEORGE. The amended amendment was rejected by 262 to 153, a majority of 109.

JUNE 28. (CLAUSE 1.) On June 28, Mr. WHITTAKER moved an amendment which would have limited the Bill to the case of the *ante*-1869 beerhouses alone. The amendment was rejected on a division by 288 to 165, a majority of 123. Mr. HERBERT ROBERTS moved an amendment to make it a ground of refusing a license without compensation that the licensee had failed to provide reasonable refreshment. The Government, instead of saying that this was dealing with an issue outside the scope of the Bill, hesitated, and at the end of the afternoon's sitting allowed a motion to report progress, the evening sitting having been claimed by a motion for the adjournment on the question of Army re-organisation.

JUNE 29. (CLAUSE 1.) The Committee stage was resumed on June 29, the Solicitor-General having in the meantime placed on the Paper an amendment to the following effect:—

> "Clause 8, at end insert '(2) If the justices of a licensing district refuse to renew an on license on the ground that the holder of the license has persistently and unreasonably refused

to supply suitable refreshment (other than intoxicating liquor), the justices shall be deemed to have refused the license on the ground that the premises have been ill-conducted."

This proposal was discussed, and eventually a division was taken on Mr. HERBERT ROBERTS' original amendment, which was rejected by 265 votes to 180, a majority of 85. Mr. LEWIS moved to insert as another specific ground of refusal that the premises "are remote from or difficult of police supervision." It was rejected by a majority of 82. Mr. ROBERTS moved to insert words to bring within the clause "undesirable practices or methods of trade"; and on this the general question of the inclusion of provisions extending the scheme of the Clause was debated. In a valuable speech the Prime Minister said :—

"The Government were of opinion that a man's licence might be taken away without compensation for misconduct. They were not of opinion that it ought to be taken away without compensation for something that was not misconduct."

The amendment was rejected by a majority of 78. Mr. HEYWOOD JOHNSTONE had on the paper an amendment to leave out in line 7 of the Bill the words "or are structurally deficient or unsuitable," and to insert "that the applicant has failed to comply with an order for structural alterations under section 11, subsection (4) of the Licensing Act, 1902." He was, however, prevented by a ruling of the Chairman from moving his amendment in this form, and moved instead to omit the words "structurally deficient." This was opposed by the Government and negatived without a division. Mr. H. GREENE, K.C., next moved to omit the words "or unsuitable," but finally withdrew the amendment. The hoped for improvement of the Clause, in respect to the question of requirements as to structure advanced by the justices, therefore, unfortunately failed. The evening sitting was trenched on by the consideration of another measure (the London County Council, General Powers, Bill). When the Licensing Bill was resumed, Mr. WHITLEY moved an amendment to bring into

the specific grounds in Clause 1 the question of the value qualification of the premises. *The Solicitor-General undertook to insert in line 9 the words "or on the ground that the renewal would be void."* Mr. BOUSFIELD moved an amendment to insert among the grounds "or that the proposed licensee refuses or has wilfully neglected to comply with any reasonable requirement of the justices." The danger of this amendment, which would have given a legal sanction to any faddist requirement of a particular bench, is obvious, and the matter had already been discussed. The debate was, however, continued at length, the amendment being finally rejected by 214 votes to 146, a majority against of 68.

The same night (June 29) Mr. BALFOUR gave notice, in moving the adjournment of the House, that he would put on the Paper a Motion for hastening the proceedings on the Licensing Bill.

JULY 1 TO 5. (CLOSURE MOTION.) The Closure by Compartments Motion alluded to above came under discussion in the House of Commons on Friday, July 1, Monday, July 4, and Tuesday, July 5. It was carried in due course after a series of divisions, in which the Government majorities varied from 80 to 55. The last of these divisions took place at 7.30 on July 5, and at the evening sitting the discussion of Clause 1 of the Licensing Bill in detail was resumed.

JULY 5. (CLAUSE 1.) Mr. HELME moved to insert the word "otherwise" after "unsuitable" in line 7. The effect of this would have been to allow confiscation without compensation where, for example, the justices thought the situation of the house undesirable. This was rejected by a majority of 52. Mr. LEWIS proposed to insert amongst the grounds of refusal without compensation that the premises had been subject to frequent changes of tenancy; rejected by a majority of 71. Mr. HERBERT ROBERTS moved to insert words giving power to the justices in considering the question of the renewal of a licence to take into account not only the character or fitness of the incoming tenant but also of the outgoing

one. The Government replied that the amendment was not required. It was rejected by a majority of 94. Mr. LAWRENCE moved to include words dealing with conduct on the part of the proposed licensee which was objectionable, though scarcely within the phrase "ill-conduct" contained in the Bill; rejected by a majority of 73. Mr. HERBERT ROBERTS moved an amendment which would have made the "contractual rights and liabilities" of the tenant as regards the licensed premises a field for the investigation of the justices and the possible sacrifice of the licence; rejected by a majority of 100. Mr. WHITLEY moved to omit the word "proposed" in line 8; rejected by a majority of 94. On the motion of the Solicitor-General, the insertion of the words "the ground that the renewal would be void" (see entry of June 28 *ante*) was agreed to. Mr. HERBERT ROBERTS moved a further amendment to include among the specified grounds on which a licence might be refused without compensation "or that any conditions upon which the licence was granted have not been fulfilled." The Solicitor-General declined to accept the amendment, and argued against any words being added on this head. He, however, *expressed a willingness to accept*, if desired, some such amendment as this: "*or for breach of any undertaking given by the licence-holder to the justices on the occasion of the grant or previous renewal of the license.*" Mr. ROBERTS' amendment was then withdrawn. Sir J. WOODHOUSE now moved words to except county boroughs from the clause. This was with the object of raising the question of the difficulty of the arrangement of jurisdiction therein under the Bill as drafted. The Solicitor-General stated the amendment was out of place here, but *indicated* that on Clause 7 he would be prepared *to make the licensing committee in county boroughs the court of first instance for renewals* as well as new grants, *with an appeal to the full Bench. He also announced that the provision for the Recorder to act as Chairman would be excised.*

JULY 6. FIRST APPOINTED DAY. (CLAUSE 1.) This was the first day coming under the Closure by compartments arrangement, and under that scheme was devoted to Clause 1. Over 17 pages of amendments to Clause 1 still stood on the paper, despite the extent to which this clause

had already been discussed. Sir ROBERT REID moved to insert after license in line 9 the words "or any of the before-mentioned grounds in combination with any other ground." This would have enabled justices by joining another nominal ground to non-requirement to prevent compensation being given. The amendment was rejected by a majority of 79. Mr. MCKENNA moved to leave out the words in lines 9 and 10, "shall be vested in Quarter Sessions instead of in the licensing justices of the district"; rejected by a majority of 77. Mr. ELLIS GRIFFITH proposed that the joint police committee should be substituted for Quarter Sessions in county areas as the reduction authority; rejected by a majority of 87. Mr. ROBERTS moved that Quarter Sessions should only have the powers given under the Bill upon the condition of setting up a compensation fund; rejected by a majority of 91. Mr. LEWIS moved to give Quarter Sessions an option as to adopting the Act; majority against the amendment, 155. Mr. H. HOBHOUSE then moved an amendment preliminary to a proposal that the licensing justices should every third year review all the licenses in their district and report thereon: rejected by 59, but the Government indicated some intention of moving in the matter as far as an annual report by Quarter Session of action under the Act went (see words introduced on July 11). Sir J. WOODHOUSE proposed that the reduction authority should be a committee elected one-half from justices and one-half from county council: rejected, majority 94. Mr. DUKE moved to insert words providing that Quarter Sessions when exercising powers under this Bill should act as an administrative, as distinguished from a judicial, body: rejected, majority 62. Mr. GRIFFITH proposed that the licensing justices should sit with Quarter Sessions in considering the reports: rejected, majority 82. Mr. MUNRO FERGUSSON moved an amendment preliminary to a scheme which within seven years would reduce licenses to 1 to 750 in towns and 1 to 400 in country districts: rejected, majority 97. Mr. ASQUITH proceeded to move an amendment (standing in the name of Mr. GRIFFITH) to leave out the vesting of the powers of refusal in Quarter Sessions and their exercise with compensation. Mr. BALFOUR rose to speak, and at 11 o'clock

the closure rule operated. The following Government amendments were agreed to: After "district" in line 16 to insert "*on the consideration by them in accordance with the Licensing Acts* 1828 *to* 1902 *of applications for the renewal of licenses.*" Line 17, after "particular" insert "*existing.*" Line 23, after "premises" insert "*and unless it appears to Quarter Sessions unnecessary, any other persons appearing to them to be interested in the question of the renewal of the license of those premises.*" *Clause* 1, *as amended, was carried by* 281 votes to 194, a majority of 87. Mr. LLOYD GEORGE then unsuccessfully challenged the right of those members interested in the Trade to vote in divisions, and progress was reported.

JULY 11. SECOND APPOINTED DAY. (CLAUSES 2 & 3.)

At the beginning of Clause 2, Mr. ROBERTSON moved an amendment, the effect of which would have been that in calculating compensation the larger licensed houses must be taken as subject to a license duty five times as great as at present. The amendment was rejected by a majority of 121. Sir WILLIAM HOULDSWORTH again raised the Time Limit question by a suggested amendment which proposed that compensation should be paid during 14 years, and after the end of that period all that should be given was a refund of money paid to the insurance fund by a dispossessed licensee. The amendment was opposed by the Government and defeated by a majority of 41. In the course of the debate in reply to a question as to what was meant by the words "calculated as if this Act had not passed," the Solicitor-General said he would consent, if desired, to insert "as if the license were subject to the same conditions of renewal as were applicable immediately before the passing of this Act." Mr. BLACK moved an amendment to pay out of the compensation fund for houses taken for purposes of public improvements. This was opposed by the Government and withdrawn. Mr. SEELY moved a long amendment to define the division of the compensation payment amongst employees on licensed premises, the occupier, and the owner. This also contained a Time Limit reservation. The closure came into operation, and the

amendment was rejected by a majority of 104. The following Government amendments to Clause 2 were then agreed to: Page 2, line 4, leave out "in default of agreement" and insert "*if an amount is agreed upon by the persons appearing to Quarter Sessions to be interested in the licensed premises and is approved by Quarter Sessions, be that amount, and in default of such agreement and approval shall.*" Line 8, after "premises" insert "*including the holder of the license.*" Line 9, leave out from "be" to "determined" in line 10, and at end of line 10 insert "*having regard in the case of the license holder not only to his legal interest in the premises but also to his conduct and to the length of time during which he has been the holder of the license, and the holder of a license shall (notwithstanding any agreement to the contrary) in no case receive a less amount than he would be entitled to as tenant for a year, or from year to year of the licensed premises.*"

Clause 2 as amended was then added to the Bill by a majority of 106.

The Government amendments to Clause 3 were then taken, the only division taken showing a majority of 124. The amendments are shown in their place on the copy of the Bill as amended, circulated with this memorandum. The most important was the substitution for the original unworkable subsection (3) of Clause 3 of the following: (3) *Such deductions from rent as are set out in the Second Schedule to this Act may, notwithstanding any agreement to the contrary, be made by any license holder who pays a charge under this section, and also by any person from whose rent a deduction is made in respect of the payment of such a charge.*" This new subsection, taken with the new Schedule II., enables a license holder, the term of whose tenancy does not exceed a year, to deduct from his rent the whole of the insurance charge, and allocates in all cases the burden of the charge amongst those further interested. The other amendments to the clause included one making Quarter Sessions levy the charges unless they certified it was unnecessary, and another providing for annual returns of proceedings under the Act.

Clause 3, as amended, was added to the Bill by a majority of 106.

JULY 12. THIRD APPOINTED DAY. (CLAUSES 4 & 5.) In the allotment of time under the closure motion the whole of July 12 was given to Clause 4 of the Bill. Rather more rapid progress than usual was, however, made, and part of Clause 5 was also dealt with. The Home Secretary explained his *amendments to subsection* (1) *of clause* 4 (see print of amended Bill) which have simplified the system of confirmation of new licenses by making it analogous to the existing practice, and these *were agreed to.* Mr. HOBHOUSE moved to allow Quarter Sessions to vary any conditions attached to the grant of a new license: the amendment was withdrawn. Mr. WHITTAKER moved to suspend the grant of new licenses until 1907: amendment withdrawn. He then proposed that no application of a new license should be granted until the justices had given notice that one was required: amendment negatived. Sir E. GREY moved that when a local authority so decided no new license should be granted in that area save to Trust houses: after considerable discussion the amend ment was withdrawn. Mr. LLOYD GEORGE proposed that no new license should be granted save with notice to and on hearing the local authority of the area: rejected, majority 84. The Home Secretary moved the *substitution of several new subsections to clause* 4 *in the place of subsec.* (2) *standing in the Bill.* The new form (*which was eventually passed*) as well as the superseded original proposal will be found in the copy of the Bill as amended sent herewith. The new scheme, which is a revolution in the Licensing System as regards new licenses, was severely criticised by Mr. CRIPPS and others, but great difficulty arose in dealing with a proposal of such novel and large scope when introduced at so late a stage. On the operation of the closure Clause 4, as amended, became part of the Bill without a division. The consideration of Clause 5 was then entered on. Mr. WHITLEY moved the omission of the words "may if they think fit" in line 23 with a view of making Quarter Sessions subdivide their area: rejected, majority 110. Mr. NUSSEY proposed the addition of words to subsection (1) to prevent excessive subdivision of areas: rejected, majority 110. An amendment to omit subsection (2) was under discussion when the House adjourned.

JULY 13 FOURTH APPOINTED DAY (CLAUSE 5 TO END OF BILL.)

The general discussion on Clause 5 subsection (2) was resumed, and the proposal to omit the subsection was rejected by a majority of 70. Mr. WORSLEY-TAYLOR moved that the rules governing the appointment of Committees should be made by Quarter Sessions subject to approval by the Secretary of State. This was to place some of the matters regulated by rules in the hands of Quarter Sessions. The amendment was *accepted.* The Home Secretary's amendment as to County Boroughs not being required to delegate Quarter Sessions functions to committees having been accepted, a proposal was advanced to treat non-county boroughs of 25,000 population as county boroughs, and another which made the population figure 10,000. The latter amendment was rejected by a majority of 151, the former by 75. The Government, however, reiterated a pledge to give the non-county boroughs representation on Quarter Sessions. An amendment to give solicitors a statutory right to be heard at Quarter Sessions was rejected by a majority of 97. A Government amendment increasing the number of the Licensing Committee in county boroughs was agreed to with an understanding that a minimum number should be inserted on Report. A discussion as to only qualified justices acting followed. The Government promised to make this clear, but resisted an amendment, moved by Mr. ROBERTS, to increase the disqualifications of justices connected with the Trade. Mr. CRIPPS moved an amendment to the effect that no justices who had taken part in a decision to report a license should again sit at Quarter Sessions when that report was considered. This was opposed as presenting practical difficulties and withdrawn. Clause 5, as amended was then agreed to. On Clause 6 an amendment was moved to insert after "a Secretary of State may" the words "subject to the consent of Parliament." On this a long discussion took place on the subject of the rules, the Government maintaining their main position, but promising that the Home Office would consult with Quarter Sessions. The amendment was rejected by a majority of 82. The closure being now operative the remaining clauses and schedules

were added to the Bill with the addition of the Government amendments (see print of Bill herewith). In various Divisions which were taken the Government had majorities varying from 85 to 162, and the final motion that the Bill as amended be reported to the House was carried by 211 to 117, a majority of 94.

JULY 26. FIFTH APPOINTED DAY. REPORT STAGE. (NEW CLAUSES & CLAUSES 1 TO 3).

This was the first day of the consideration of the Bill on Report. Sir J. FERGUSSON moved a new clause that a justice be not disqualified from administering the Act by holding shares in a company connected with the Trade unless he was a director or connected with the management. The clause was opposed by the Government and withdrawn. Mr. LLOYD-GEORGE moved a new clause to set up a 14 years' time limit. This was rejected by 220 to 138, a majority of 82. A new clause, proposed by Mr. LAWSON WALTON, having been moved but quickly withdrawn, Mr. BOUSEFIELD mentioned, but did not move, another time limit proposal which he said would be raised in the House of Lords. Mr. WORSLEY TAYLOR moved a new clause that no justice should be disqualified under section 60 of the Act of 1872 to act as to the imposition and levying of charges on licenses. The Solicitor-General said that the Bill did not go so far as was suggested, and the clause was withdrawn. A motion by Mr. HERBERT LEWIS to omit Clause 1 of the Bill was then rejected by 232 to 140, a majority of 92. Some drafting amendments having been agreed to, Mr. GROVES moved to add words to make the Bill include certain off-licenses. The Home Secretary, however, said the Government could not accept the amendment, and it was negatived without a division. Mr. LEWIS moved an amendment with the object of excluding tied houses from the scope of the Bill. This was rejected by 199 votes to 110, a majority of 89. Mr. HERBERT ROBERTS again raised the proposal to substitute for the specified grounds in Clause 1 the words that the license was refused on the sole ground that the licensed premises were not required in the public interest.

The amendment was rejected by 217 to 135, a majority of 82. On an amendment moved by Mr. HOBHOUSE, the closure came into operation, and the division resulted in 229 votes to 160, a majority of 69 against the proposal. The Government amendments were then put and either agreed to or carried to a division. Among the most important of these were the following:—To substitute in Clause 2 for the words "calculated as if this Act had not passed," the words "calculated as if the license was subject to the same conditions of renewal as were applicable immediately before the passing of this Act." An amendment to make it clear that the appeal from the Commissioners of Inland Revenue under Clause 2 (2) was to the High Court. A proposal to insert the words "if a tenant" in the same sub-section after the words "holder of the license," the apparent effect of which is to prevent these words applying to a manager. An amendment providing for a reference to the County Court of questions arising at Quarter Sessions as to the division of the compensation money amongst the parties. The consideration of Clause 4 was then begun.

JULY 27. SIXTH APPOINTED DAY. REPORT STAGE. (CLAUSE 4 TO END OF BILL.)

An amendment to allow Quarter Sessions as a confirming authority to have the power of varying conditions attached by the justices to the grant of a new license was adopted. The Government consented to accept the proposal to add the words "*and the powers of Quarter Sessions shall include the power to confirm or, with the consent of the justices of the licensing district, to vary any conditions attached to a new license under the provisions of this section.*" Mr. CRIPPS moved the first of a series of amendments, the general object of which was to restore the Clause to the form in which it stood in the Bill as introduced. The Prime Minister said the Government did not desire to promote the system of putting up licenses to auction, and admitted that there was considerable force in the observation that a seven years term might not be long enough to enable a tenant to recoup himself for obligatory construction or

reconstruction of premises. The amendment was withdrawn. The Solicitor-General then moved to include the following amendments after the word "public" in Sub-section (2) to Clause 4:—

"*subject as follows*—(a) *Such conditions shall in any case be attached as, having regard to proper provision for good management, the justices think best adapted for securing to the public any monopoly value which is represented by the difference between the value which the premises will bear, in the opinion of the justices, as licensed premises, and the value of the same premises if they were not licensed; provided that in estimating the value as licensed premises of hotels or other premises where the profits are not wholly derived from the sale of intoxicating liquor, no increased value arising from profits not so derived shall be taken into consideration;* (b) *the amount of any payments imposed under conditions attached in pursuance of this section shall not exceed the amount thus required to secure the monopoly value.*"

In the course of the debate, Mr. GRETTON pointed out that the money to be derived from new licenses ought not to go to the local taxation fund, and that the new Clause 4 would put an end to the system of surrenders, and generally be inimical to all small traders as free licensees. The Solicitor-General, in reply to Mr. ASQUITH, said he would look further into the Clause. Mr. WORSLEY TAYLOR proposed to amend the Solicitor-General's amendment so as to secure the payment of a reasonable return for the expenditure incurred in respect to the premises. The Solicitor-General suggested that the words "the suitability of the premises" might do, and he would consider the point. The amendment was withdrawn. Mr. ROBERTSON moved to excise the proposal as to the monopoly value in the case of hotels; rejected by 222 votes to 126, a majority of 96. Mr. LEWIS moved the omission of Sub-section (*b*) of the Attorney-General's amendment. The proposal was, by leave, withdrawn, and the Solicitor-General's amendment agreed to. Mr. DISRAELI moved to omit Sub-section (3) of Clause 4. Mr. GRETTON, Mr. GROVES, and other speakers pointed out the absurdity of so short a period as the seven years term, but the amendment was negatived. Mr. BOND proposed to make the term fifteen years. The amendment was

negatived. Mr. ROBERTS moved an amendment that no new license should be granted where the premises are in the vicinity of a place of worship or school; rejected by 216 to 121, a majority of 95. The closure now operated. The Government amendments on the remainder of the Bill were agreed to after two divisions, the most important amendments being one including the representation of non-county boroughs at Quarter Sessions, and one providing that where a provisional grant had been made and confirmed before the passing of the Bill this should be deemed to be an existing license.

JULY 29. THIRD READING. SEVENTH APPOINTED DAY.

The Third Reading debate took place on July 29, Mr. ASQUITH moving the rejection of the Bill. The Solicitor-General replied, and the debate was finally wound up by Sir H. CAMPBELL-BANNERMAN and the Prime Minister. The House divided, when Mr. ASQUITH'S amendment to reject the measure was defeated by 217 votes to 129, a majority of 88. The Bill was then read a third time.

HOUSE OF LORDS.

AUGUST 1 & 2. SECOND READING.

The Licensing Bill was brought up from the Commons and read a first time in the House of Lords on July 29. The Second Reading was moved by Lord BELPER on August 1. Lord PEEL led a direct opposition to the measure by moving the following amendment: "That this House cannot accept as a satisfactory settlement of the Licensing question a Bill which creates a perpetual interest in a terminable license." This was debated at length on August 1 & 2, and on the latter date the division was taken. There voted: For the amendment, 47; against the amendment, 142—majority against, 95. The Bill was then read a second time.

AUGUST 4. COMMITTEE STAGE. (CLAUSES 1 & 2.)

The consideration of the Bill in Committee was commenced on August 4. Lord COLERIDGE moved an amendment to Clause 1, which put houses where there is a tie outside the compensation scheme. After discussion, the amendment was withdrawn. The Earl of WEMYSS moved to insert words which would have prevented a license being refused on the ground of structure of premises without compensation unless the justices had made an order for alterations, and this had been disregarded by the licensee. This was opposed by the Government and withdrawn. The Marquess of SALISBURY moved to insert the word "structurally" before unsuitable, so that the words in the Bill would run "are structurally deficient or structurally unsuitable." This was carried by 124 votes to 38—a majority of 86. Lord STANLEY of ALDERLEY moved words to give an initiative as to reducing licenses to Quarter Sessions; the amendment was negatived. A proposal by Lord KINNAIRD to omit the words "unless it appears to Quarter Sessions to be unnecessary," which regulate the persons to be heard by Quarter Sessions as to a reported license, was negatived. The Government tentatively accepted from Lord STANLEY of ALDERLEY an amendment to insert the words "or refusal" after "the question of the renewal" in line 28, page 1, of the Bill. The Archbishop moved his 21 years time limit proposal. After debate this was *rejected* by 126 votes to 52—*majority against, 74.* An amendment, proposed by Lord WEMYSS, to insert the words "market value" in Clause 2, Sub-section (1), was declared by the Government to be unnecessary, and was withdrawn. Lord STANLEY of ALDERLEY moved an amendment to make 10 years rateable value of the licensed premises the maximum compensation; negatived. Lord GREY moved an amendment, the object of which was to strike out the words "calculated as if the license were subject to the same conditions of renewal as were applicable" at the time of the passing of the Act, and to have the value of the licensed premises stereotyped in every respect as at the passing of the Act. Some debate followed, and the Opposition forced a division on a dilatory motion. This, however,

was defeated by a majority of 48. A division was then taken on the amendment, which was defeated by 83 votes to 38—a majority of 45.

AUGUST 5. COMMITTEE STAGE. (CLAUSE 2 TO END OF BILL).

The Committee stage was resumed on August 5. Earl GREY moved to insert in Clause 2 (1) the words "and in any case where the value of the licensed premises has been enhanced by the refusal to renew any other license under this Act as if the value had not been enhanced." On a promise of further consideration on Report, the amendment was withdrawn. Lord COLERIDGE moved to deduct from the compensation payable to any person any increased value accruing to other licensed property in which the person was interested; amendment withdrawn. The Earl of ARRAN moved that the right of supplying intoxicating liquor to a house should not be included as an element of value in calculating compensation; amendment withdrawn. A similar proposal made by Lord BURGHCLERE was defeated by 112 to 42. An amendment proposed by Lord STANLEY of ALDERLEY to alter the basis of the compensation payment was negatived. Lord BEAUCHAMP moved an amendment as to tenants' fixtures—a matter subsequently dealt with on Report. Earl GREY proposed as a new sub-section to Clause 2 that occupiers of licensed premises should make a monthly return to the Inland Revenue of the amount of liquor sold; withdrawn. On Clause 3, Sub-section (1), the Bishop of LONDON proposed to do away with the words regulating the maximum levy for compensation purposes, and thus to allow an unlimited charge; negatived. An amendment proposed by Earl STANHOPE to specifically include "all necessary legal expenses" in Clause 3, Sub-section (5), was negatived, as was an amendment by the Earl of CARLISLE to apply Section 20 of the Act of 1902 to the consideration of reports of justices against a renewal. The Primate proposed that the borrowing powers under the Act be limited to seven years; withdrawn and matter to be dealt with on Report. An amendment to insert words in Clause 4 to further show there was no compensation for new licenses was withdrawn as unnecessary. A

Government amendment to secure the provision of suitable premises not being prevented by the appropriation of the monopoly value was agreed to. Lord COLERIDGE moved to require notice to the local authority before the grant of a new license; withdrawn. An alteration in the wording of Sub-section 3 to show that justices need not grant new licenses for a term unless they desired was agreed to. Earl GREY moved to omit Sub-section (3) of Clause 4; motion withdrawn. The omission of Sub-section (4) of Clause 4 was moved on the ground of its bribe to grant new licenses to get money for reduction of rates. The motion was withdrawn on further consideration being promised. The Bishop of HEREFORD moved a new clause to allow justices to prohibit a tie; negatived. Lord COLERIDGE proposed that the reduction authority should be a committee with half its members appointed by Quarter Sessions and half by the County Council; defeated by 76 to 23—majority, 53. Drafting amendments in Clauses 5 & 6 were agreed to. On Clause 7 Lord MONKSWELL opposed the City of London being treated as a County Borough. His amendment was defeated by 91 votes to 32. On Clause 8 the words "at a reasonable price" were accepted as an addition to those providing for the supply of refreshments other than liquor. A proposal by the Archbishop of CANTERBURY to insert words that a refusal to fulfil any undertaking *asked* by the justices would be misconduct was negatived. The Government accepted from Lord WEMYSS an amendment providing for the owner of the premises having notice of any undertaking required from the license-holder. An amendment moved by Lord CARLISLE that the 1869 houses should be placed in every respect on the same level as full licenses as to grounds of refusal was rejected by 91 to 27. The Government moved an amendment to add to the definition of "existing" on licenses, licenses transferred or removed to any other premises under Section 14 of the Act of 1828 or Section 50 of the Act of 1872. After some discussion the amendment was withdrawn. A definition of a transfer having been inserted and Lord WEMYSS's amendment that the Act come into operation on January 1, 1905, accepted, the Committee Stage terminated.

AUGUST 8. REPORT STAGE. The Report Stage of the Bill was commenced and concluded on this date. On the motion of the Marquess of SALISBURY, words to specifically include the justices of the Licensing District amongst those who might be heard by Quarter Sessions when considering whether a reported license should be renewed were inserted. After some drafting amendments had been agreed to, Earl GREY moved to insert words in the first Sub-section of Clause 2 to say that when the value of a license had been enhanced by the refusal to renew any other licenses, this enhancement should not be reckoned in the compensation; rejected by 46 votes to 21—a majority of 25. The Earl of ONSLOW moved to insert in the definition of the basis of value to be taken by the Commissioners of Inland Revenue words including the amount of any depreciation of trade fixtures due to the refusal to renew; agreed to, with a consequential amendment. An amendment by the Marquess of HUNTLY on the lines of that by Lord GREY, recorded above, was negatived. The Marquess of SALISBURY moved a new Sub-section (4) to Clause 2, providing that on an appeal from the finding of the Commissioners of Inland Revenue to the High Court unless the High Court order the costs to be paid by some party to the appeal other than the Commissioners, the costs of the Commissioners be paid out of the amount to be paid as compensation. On Clause 3 the Archbishop of CANTERBURY moved to limit the term of borrowing on the security of the compensation charges for the purposes of compensation to seven years. This amendment was withdrawn, but the term of fifteen years was subsequently fixed as a maximum (see Clause 6). On Clause 4, after some drafting alterations, Lord STANLEY of ALDERLEY moved that a removal of a license be deemed a new grant; defeated by 47 to 26, majority of 21. A new sub-section providing for the transfer of new licenses granted for a term of years was inserted. Earl GREY moved to alter the sub-section allocating payments for new grants to the local taxation fund, and to make them go to "such purposes not properly chargeable to the rates as the confirming authority determine"; accepted (but subsequently deleted by the Commons on the

ground of an infringement of privilege—see *post* p. 20). Drafting alterations in Clause 5 were agreed to. On Clause 6 an improved provision as to returns by Quarter Sessions of their proceedings under the Act was agreed to.

AUGUST 9. THIRD READING.

Lord BELPER formerly moved the Third Reading of the Licensing Bill on August 9. After speeches by Earl SPENCER, the Archbishop of CANTERBURY, Lord BELPER, Lord BALFOUR, the Marquess of SALISBURY, and the Bishop of LONDON, the Bill was read a third time without a division.

HOUSE OF COMMONS.

AUGUST 11. LORDS AMENDMENTS CONSIDERED BY THE COMMONS.

About midnight on August 11 the House of Commons considered the amendments of the Licensing Bill made in the House of Lords. Objection was taken to the system of paying the costs of the Commissioners of Inland Revenue on an appeal to the High Court out of the compensation payment, but the amendment to Clause 2, which was inserted on Report in the House of Lords, was agreed to. On Clause 4, Sub-section (4), the Speaker ruled that the Lords' amendment allocating payments for new licenses "to such purposes of public benefit not chargeable to the rates as the confirming authority determine," was a breach of the privileges of the House of Commons. The amendment was then in consequence disagreed with. The remaining amendments were agreed to.

HOUSE OF LORDS.

AUGUST 13. LORDS AGREE TO COMMONS AMENDMENT.

On August 13 the House of Lords agreed to the Commons amendment to the Lords amendments, and agreed not to insist on those of their amendments (see entry of August 11 above) with which the Commons had disagreed.

ROYAL ASSENT.

THE Royal Assent to the Bill, which has thus become the Licensing Act, 1904, was given by Commission on August 15. The Act will come into operation on January 1, 1905.

THE LICENSING ACT, 1904.

Showing the Text of the Bill as Introduced and the Amendments made in the House of Commons and the House of Lords.

NOTE.—Words printed in **black** type were inserted during the committee and report stages in the House of Commons.

Words in [black] type but *enclosed in square brackets* were inserted in the Commons but taken out in the Lords.

Words printed in black type *and underlined* were inserted in the House of Lords.

Words printed in (*italics*) and enclosed in brackets formed part of the Bill as introduced, but were deleted.

AN ACT

To Amend the Licensing Acts, 1828 to 1902, in respect to the extinction of Licenses and the grant of new Licenses.

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Reference to Quarter Sessions of questions as to renewal of licenses in certain cases.

1.—(1) The power to refuse the renewal of an **existing** on license on any ground other than the ground that the licensed premises have been ill-conducted or are structurally deficient or structurally unsuitable, or grounds connected with the character or fitness of the proposed holder of the license, **or the ground that the renewal would be void,** shall be vested in Quarter

Sessions instead of the justices of the licensing district, but shall only be exercised on a reference from those justices, and on payment of compensation in accordance with this Act.

In every case of the refusal of the renewal of an **existing** on license by the justices of a licensing district, they shall specify in writing to the applicant the grounds of their refusal.

(2) Where the justices of a licensing district **on the consideration by them, in accordance with the Licensing Acts, 1828 to 1902, of applications for the renewal of licenses,** are of opinion that the question of the renewal of any particular **existing** on licenses requires consideration on grounds other than those on which the renewal of an **existing** on license can be refused by them, they shall refer the matter to Quarter Sessions, together with their report thereon, and Quarter Sessions shall consider all reports so made to them, and may, if they think it expedient, after giving the persons interested in the licensed premises, **and unless it appears to Quarter Sessions unnecessary, any other persons appearing to them to be interested in the question of the renewal of the license of those premises** (including the justices of the licensing district), an opportunity of being heard and subject to the payment of compensation under this Act, refuse the renewal of any license to which any such report relates.

Payment of compensation on non-renewal of license.

2.—(1) Where Quarter Sessions refuse the renewal of an existing on license under this Act a sum equal to the difference between the value of the licensed premises (calculated (*as if this Act had not passed*) **as if the license were subject to the same conditions of renewal as were applicable immediately before the passing of this Act,** and including in that value the amount of any depreciation of trade fixtures arising by reason of the refusal to renew the license), and the value which those premises would bear if they were not licensed premises, shall be paid as compensation to the persons interested in the licensed premises.

(2) The amount to be so paid shall (*in default of agreement*) **if an amount is agreed upon by the persons appearing to Quarter Sessions to be interested in the licensed premises and is approved by Quarter Sessions, be that amount, and in default of such agreement and approval shall** be determined by the Commissioners of Inland Revenue in the same manner and subject to the like appeal **to the High Court** as on the valuation of an estate for the purpose of estate duty, and in any event the amount shall be divided amongst the persons interested in the licensed premises (**including the holder of the license**), in such shares as may be (*settled by agreement or in default of agreement*) determined by Quarter Sessions:

Provided that in the case of the license-holder regard shall be had not only to his legal interest in the premises or trade fixtures, **but also to his conduct and to the length of time during which he has been the holder of the license, and the holder of a license if a tenant shall (notwithstanding any agreement to the contrary) in no case receive a less amount than he would be entitled to as tenant [for a year, or] from year to year of the licensed premises.**

(3) **If on the division of the amount to be paid as compensation any question arises which Quarter Sessions consider** [should be referred to the determination of a] can be more conveniently determined by the County **Court, they may refer that question to the County Court, in accordance with rules of Court to be made for the purpose.**

(4) Any costs incurred by the Commissioners of Inland Revenue on an appeal from their decision to the High Court under this section shall, unless the High Court order those costs to be paid by some party to the appeal other than the Commissioners, be paid out of the amount to be paid as compensation.

Financial provisions.

3.—(1) Quarter Sessions (*may*,) **shall in each year, unless they certify to the Secretary of State that it is unnecessary to do so in any year** for the (*purpose of providing compensation under*) **purposes of** this Act, impose in respect of all **existing** on licenses (*granted or*) renewed in respect of premises within their area, charges at rates not exceeding, and graduated in the same proportion as, the rates shown in the scale of maximum charges set out in the **First** Schedule to this Act.

(2) Charges payable under this section in respect of any license shall be levied and paid together with and as part of the duties on the corresponding excise license, but a separate account shall be kept by the Commissioners of Inland Revenue of the amount produced by those charges in the area of any Quarter Sessions, and that amount shall in each year be paid over to that Quarter Sessions in accordance with rules made by the Treasury for the purpose.

(*3.*) (*The holder of a license, if he holds the licensed premises at a rent not less than a rackrent, shall, in the absence of agreement to the contrary, be entitled to deduct from his rent a sum equal to three-fourths of any charge paid by him under this section, and any person from whose rent such a sum is deducted shall, if he pays a rent not less than a rackrent in respect of the premises, in the absence of any agreement to the contrary, be entitled to deduct a similar sum from his rent*).

(3) **Such deductions from rent as are set out in the Second Schedule to this Act may, notwithstanding any agreement to the contrary, be made by any license holder who pays a charge under this section, and also by any person from whose rent a deduction is made in respect of the payment of such a charge.**

(4) Any sums paid under this Act to Quarter Sessions in respect of the charges under this section, (*or in respect of special payments for new licenses*), or received by Quarter Sessions from any other source for the payment of compensation under this Act, shall be paid by them to a separate account under their management, and the

moneys standing to the credit of that account shall constitute the compensation fund.

(5) Any expenses incurred by Quarter Sessions in the payment of compensation under this Act, or otherwise in the exercise of their powers or the performance of their duties under this Act **and such expenses of the justices of the licensing district incurred under this Act as Quarter Sessions may allow** shall be paid out of the compensation fund and Quarter Sessions, in the exercise of their powers under this Act, shall have regard to the funds available for the purpose.

Quarter Sessions may, with the consent of a Secretary of State, borrow in accordance with rules made under this Act, on the security of the compensation fund, for the purpose of paying any compensation payable under this Act.

(6) [Quarter Sessions shall in each year make such returns to the Secretary of State with respect to their own action, and that of the justices of licensing districts, under this Act, as the Secretary of State may require.]*

Provisions as to new licenses.

4.—(1) (*The power of confirming new licenses, and any power exerciseable by the county licensing committee, shall, except in a borough not being a county borough*). **The power of the County Licensing Committee to confirm new licenses, and any other power of that committee shall** be transferred to Quarter Sessions, (*and in a borough not being a county borough a new on license shall not be granted except with the consent of Quarter Sessions*), [and the powers of Quarter Sessions shall include the power to confirm or vary, with the consent of the justices of the licensing district, any conditions attached to a new license under the provisions of this section.]†

* This was taken out in the Lords and the matter treated on rather wider lines in a new Section 7 (which see).

† These words enclosed in square brackets were left out in the House of Lords and replaced by the new sub-section (6) of Section 4.

(2) (*Quarter Sessions shall attach to their confirmation of a new on license or to their consent to the grant of a new on license, as the case may be, such conditions as to procuring the surrender of other licenses or the charge of special payments in respect of the new license, either by way of a single sum or by way of an annual sum to be paid on any renewal of the new license or both, as they think just, and the grant of a new on license or the renewal of any such new license shall not take effect until any such conditions have been complied with.*)

(2) **The justices** [of a licensing district] **on the grant of a new** on **license, may attach to the grant of the license such conditions, both as to the payments to be made and the tenure of the license and as to any other matters, as they think proper in the interests of the public, subject as follows:—**

(*a*) **Such conditions shall in any case be attached as, having regard to proper provision for** suitable premises and **good management, the justices think best adapted for securing to the public any monopoly value which is represented by the difference between the value which the premises will bear, in the opinion of the justices** [as licensed premises] when licensed **and the value of the same premises if they were not licensed: Provided that, in estimating the value as licensed premises of hotels or other premises where the profits are not wholly derived from the sale of intoxicating liquor, no increased value arising from profits not so derived shall be taken into consideration.**

(*b*) **The amount of any payments imposed under conditions attached in pursuance of this section, shall not exceed the amount thus required to secure the monopoly value.**

(3) [For the purposes of this section a new on license may be granted] The justices may, if they think fit, instead of granting a new on license as an annual

license grant the license **for a term not exceeding seven years, and where a license is so granted for a term.**

(*a*) **Any application for a re-grant of the license on the expiration of the term shall be treated as an application for the grant of a new license, not as an application for the renewal of a license, and during the continuance of the term the license shall not require renewal.**

(*b*) Any transfer of the license shall, subject to any conditions attached thereto on the grant, have effect for the remainder of the term of the license, and may be granted at a general annual licensing meeting as well as at special sessions, and any reference to special sessions in any enactment relating to transfers or protection orders shall include a reference to the general annual licensing meeting.

(4) **The amount of any payments made in pursuance of any conditions under this section shall be collected and dealt with in the same manner as the duties on local taxation licenses within the meaning of section twenty of the Local Government Act, 1888.***

(5) **A license granted for a term under this section may (without prejudice to any other provisions as to forfeiture) be forfeited, if any condition imposed under this section is not complied with, by order of a court of summary jurisdiction made on complaint, or if the holder of the license is convicted of any offence committed by him as such, by the court by whom he is convicted, but where a license is so forfeited the owner of the licensed premises shall have all the rights conferred on owners by section fifteen of the Licensing Act, 1874.**

* The words from and including "collected" to the end of this sub-section were omitted in the House of Lords, and the following substituted: "allocated to such purposes of public benefit not chargeable to the rates as the confirming authority determine." This alteration was refused by the House of Commons as a matter of privilege, and the clause restored to the above shape, the Lords assenting.

(6) On the confirmation of a new on license, the confirming authority may, with the consent of the justices authorised to grant the license, vary any conditions attached to the license under the provisions of this section.

Division of area and appointment of committees for purposes of Act.

5.—(1) Quarter Sessions may, if they think fit, divide their area into districts for the purposes of this Act, and in that case this Act shall operate as if those districts were separate areas for the purposes of this Act under the same Quarter Sessions.

(2) Quarter Sessions may delegate any of their powers and duties under this Act to a committee appointed in accordance with rules made (*under this Act and*) **by them** [to be approved by a Secretary of State under this Act, providing for the mode of appointment, number, quorum, and procedure of committees, and except in a county borough,] under this section and except in a county borough shall so delegate their power of confirming the grant of a new license, and of determining any question as to the refusal of the renewal of a license under this Act, and matters consequential thereon, and county licensing committees shall cease to be appointed under the Licensing Act, 1872.

(3) Quarter Sessions may make rules to be approved by a Secretary of State, for the mode of appointment of committees under this section, and for the number, the quorum, and (so far as procedure is not otherwise provided for) the procedure of those committees.

(4) **The justices of a licensing district being a county borough shall exercise their powers under the Licensing Acts, 1828 to 1902, as to the renewal of licenses through the borough licensing committee appointed under section 38 of the Licensing Act, 1872,** [but] and **such number as the whole body of justices acting in and for the borough determine shall be substituted for seven as the maximum**

number, and seven shall be substituted for three as the minimum number, of that committee.

(5) **The justices of any borough, not being a county borough, but having a separate commission of the peace, shall be entitled to appoint one of their number to act with reference to the determination of any question as to the refusal of the renewal of a license under this Act, and any** [proceedings] matters **consequential thereon, on the committee appointed under this section by Quarter Sessions and for those purposes any justice so appointed shall be deemed to be an additional member of the committee.**

6. A Secretary of State may make rules for carrying into effect this Act, and may by those rules amongst other things— Rules.

(*a*) provide for the provisional renewal of licenses which are included in reports of the justices of a licensing district under this Act, and for consultation with those justices as to their reports, and for the time and manner of the consideration of those reports, and of the payment of compensation; and

(*b*) provide for the enforcement of any security given for money borrowed, and for the time not exceeding fifteen years within which money borrowed is to be replaced; and

(*c*) regulate the management and application of the compensation fund and the audit of the accounts of Quarter Sessions, and

(*d*) provide for (*the mode of appointment, number, quorum, and procedure of*) **constituting where requisite** committees **of Quarter Sessions standing committees, and** for the employment of officers for the purposes of this Act; and

(*e*) regulate the procedure (*for obtaining the consent of Quarter Sessions to the grant of a new on license, and for the hearing under this Act of persons interested in licensed*

premises: and) **of Quarter Sessions on the consideration of the reports of justices of a licensing district under this Act and on any hearing under this Act with reference to the refusal of the renewal of on licenses or the approval or division of the amount to be paid as compensation; and**

(*f*) provide for the authentication of any documents on behalf of Quarter Sessions or their committees.

Returns to Secretary of State.

7. Quarter Sessions, with respect to their own action and that of the justices of licensing districts under this Act, and the confirming authority, with respect to new licenses granted under this Act, shall in each year make such returns to the Secretary of State as the Secretary of State may require.

Authorities and areas.

8.—(1) The area of Quarter Sessions for a county shall for the purposes of this Act include any borough (not being a county borough) or any part thereof which is locally situated in that county.

(2) This Act shall apply to a county borough as if it were a county, with the substitution **for Quarter Sessions** of the whole body of justices acting in and for the borough (*for Quarter Sessions, and the recorder of a county borough having a separate court of Quarter Sessions shall ex-officio be a member of and chairman of any committee appointed by them for the purposes of this Act.*)

(3) The City of London for the purposes of this Act shall be deemed to be a county borough.

Application of Act to special cases and interpretation.

9.—(1) The provisions of this Act shall apply to the transfer of an existing on license as they apply to the renewal of an existing on license, with the substitution of transfer for renewal.

(2) If the justices of a licensing district refuse to renew an existing on license on the ground that the holder of

the license has persistently and unreasonably refused to supply suitable refreshment (other than intoxicating liquor) at a reasonable price or on the ground that the holder of the license has failed to fulfil any reasonable undertaking given to the justices on the grant or [previous] renewal of the license, the justices shall be deemed to have refused the license on the ground that the premises had been ill-conducted:

Provided that where the justices, on an application for the renewal of an existing on license, ask the license holder to give an undertaking as aforesaid, they shall adjourn the hearing of the application, and cause notice of the required undertaking to be served upon the registered owner of the premises, and give him an opportunity of being heard.

(3) Section nineteen of the Wine and Beerhouse Act, 1869, and section seven of the Wine and Beerhouse Amendment Act, 1870, are hereby repealed, and, in the application of this Act to licenses to which the said section nineteen extends, the grounds mentioned in section eight of the Wine and Beerhouse Act, 1869, shall be substituted for the grounds mentioned in this Act as the grounds on which the power to refuse the renewal of an existing on licence is reserved to the justices of a licensing district.

(4) In this Act—

The expression "county" includes any riding, part, or division of a county having a separate commission of the peace and a separate court of Quarter Sessions: and

The expression "Quarter Sessions" means, as respects a county, the Court of Quarter Sessions for that county, (*but*) Provided that where Quarter Sessions have customarily been held separately by adjournment or otherwise for any part of a county as defined by this Act, the Secretary of State may by order, on the application of the justices sitting at each such separate sessions constitute

for the purposes of this Act any part of the county for which Quarter Sessions are for the time being so separately held a separate county, and the justices usually sitting at such separate Quarter Sessions, **a separate Quarter Sessions,** and make all necessary provisions for the administration of the Act in such a case:

The expression "on license" means a license for the sale of any intoxicating liquor (other than wine alone or sweets alone) for consumption on the premises, and the expression "new on license" shall be construed accordingly, and the expression "existing on license" means an on license in force at the date of the passing of this Act, and includes a license granted by way of renewal from time to time of a license so in force, whether such license continues to be held by the same person, or has been or may be transferred to any other person or persons. Provided that where a provisional grant and order of confirmation of an on license has been made before the passing of this Act under section twenty-two of The Licensing Act, 1874, and is subsequently declared to be final under that section, the license shall, although not in force at the date of the passing of this Act, be deemed to be an existing on license.

The expression "transfer" means a transfer under section four or section fourteen of the Alehouse Act, 1828.

LICENSING ACT, 1902.

An Act to amend the Law relating to the Sale of Intoxicating Liquors and to Drunkenness, and to provide for the Registration of Clubs.

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Part I.—Amendment of Law as to Drunkenness.

1.—If a person is found drunk in any highway or other public place, whether a building or not, or on any licensed premises, and appears to be incapable of taking care of himself, he may be apprehended and dealt with according to law.

2.—(1) If any person is found drunk in any highway or other public place, whether a building or not, or on any licensed premises, while having the charge of a child apparently under the age of seven years, he may be apprehended, and shall, if the child is under that age, be liable on summary conviction to a fine not exceeding forty shillings, or to imprisonment, with or without hard labour, for any period not exceeding one month.

(2) If the child appears to the court to be under the age of seven, the child shall, for the purposes of this section, be deemed to be under that age unless the contrary is proved.

(3) The offence under this section shall be included in the list of offences mentioned in the First Schedule to the Inebriates Act 1898, and in section sixty of the Licensing Act, 1872.

3.—Where a person is convicted of any offence mentioned in the list of offences contained in the First Schedule to the Inebriates Act,

1898, as amended by this Act, the court may, either in addition to or in substitution for any other penalty, order the offender to enter into a recognisance, with or without sureties, to be of good behaviour.

4.—Where a licensed person is charged with permitting drunkenness on his premises, and it is proved that any person was drunk on his premises, it shall lie on the licensed person to prove that he and the persons employed by him took all reasonable steps for preventing drunkenness on the premises.

5.—(1) Where the husband of a married woman is a habitual drunkard, as defined by section three of the Habitual Drunkards Act, 1879, the married woman shall be entitled to apply for an order under the Summary Jurisdiction (Married Women) Act, 1895, and that Act shall apply accordingly.

(2) Where the wife of a married man is a habitual drunkard, as defined by section three of the Habitual Drunkards Act, 1879, the married man shall be entitled to apply to a court of summary jurisdiction for an order under this sub-section, and on any such application the court may make one or more orders containing all or any of the following particulars :—

(*a*) A provision that the applicant be no longer bound to cohabit with his wife (which provision while in force shall have the effect in all respects of a decree of judicial separation on the ground of cruelty);

(*b*) A provision for the legal custody of any children of the marriage ;

(*c*) A provision that the applicant shall pay to his wife personally or for her use to any officer of the court or other person on her behalf, such weekly sum not exceeding two pounds as the court, having regard to the means both of the applicant and his wife, consider reasonable ;

(*d*) A provision for payment by the applicant or his wife, or both of them, of the costs of the court, and such reasonable costs of the parties or either of them as the court may think fit.

Subject to the foregoing provisions, the Summary Jurisdiction (Married Women) Act, 1895, shall apply to an application and order under this sub-section in like manner as it applies to an application and order under that Act, except that for references to a married woman and her husband shall be substituted references to a married man and his wife.

Provided that instead of making an order in pursuance of paragraph (*a*) of this sub-section the court may, with the consent of the wife, order her to be committed to and detained in any retreat licensed under the Inebriates Acts, 1879 to 1900, the licensee of which is willing to receive her; and such order shall have effect as if she had been admitted to the retreat under section ten of the Habitual Drunkards Act, 1879, as amended by any subsequent enactment, and the court may order an officer of the court or a constable to remove her to the retreat accordingly.

6.—(1) Where upon the conviction of an offender the court is satisfied that an order of detention could be made under section one or section two of the Inebriates Act, 1898, then whether an order of detention is made or not, the court shall order that notice of the conviction, with such particulars as may be prescribed by a Secretary of State, be sent to the police authority (within the meaning of the Police Act, 1890) for the police area in which the court is situate.

(2) Where a court in pursuance of this Act orders notice of a conviction to be sent to a police authority, the court shall inform the convicted person that the notice is to be so sent; and

(*a*) if the convicted person within three years after the date of the conviction purchases or obtains, or attempts to purchase or obtain any intoxicating liquor at any premises licensed for the sale of intoxicating liquor by retail, or at the premises of any club registered in pursuance of the provisions of Part III. of this Act, he shall be liable, on summary conviction, to a fine not exceeding, for the first offence, twenty shillings, and for any subsequent offence, forty shillings; and

(*b*) if the holder of any license authorising the sale of intoxicating liquor by retail whether for consumption on or off the premises, or any person selling, supplying, or distributing intoxicating liquor, or authorising such sale, supply, or distribution on the premises of a club registered in conformity with the provisions of Part III. of this Act, within that period knowingly sells, supplies, or distributes, or allows any person to sell, supply, or distribute intoxicating liquor to, or for the consumption of, any such person, he shall be liable on summary conviction, for the first offence, to a fine not exceeding ten pounds, and for any subsequent offence in respect of the same person, to a fine not exceeding twenty pounds.

(3) Regulations shall be made by the police authority for the purpose of securing the giving of information to licensed persons and secretaries of clubs registered under Part III. of this Act of orders made under this section, and for assisting in the identification of the convicted persons.

7.—Any person who, being on any premises licensed for the sale of any intoxicating liquor, whether for consumption on or off such premises, shall procure or attempt to procure, any intoxicating liquor for consumption by any drunken person, or who shall aid and abet any drunken person in obtaining or consuming any intoxicating liquor on any premises so licensed as aforesaid, shall be liable on summary conviction to a fine not exceeding forty shillings, or to imprisonment, with or without hard labour, for any period not exceeding one month.

8.—For the purposes of section twelve of the Licensing Act, 1872, and of sections one and two of this Act, the expression "public place" shall include any place to which the public have access, whether on payment or otherwise.

Part II.—Amendment of Licensing Law.

9.—(1) Where a licensed person is convicted before any court of any offence committed by him as such, it shall be the duty of the clerk of the licensing justices to enter notice of every such conviction, in the form prescribed by the Secretary of State, in the register of licenses kept by him, and if the clerk of the court is not the clerk of the licensing justices, he shall forthwith send notice of the conviction to the clerk of the licensing justices.

(2) On any application for the grant, renewal, or transfer of a license the licensing justices shall have regard to any entries in the register of licenses relating either to the person by whom, or to the premises in respect of which, the license is to be held.

(3) When a conviction relating to any premises is entered in the register of licenses, it shall be the duty of the clerk of the licensing justices to serve, in manner provided by the Licensing Act, 1872, notice of the conviction on the owner of the premises.

(4) After the commencement of this Act no conviction shall be recorded on a license.

10.—(1) Notwithstanding anything contained in section seventy-three of the Licensing Act, 1872, a justices' license shall be required in the case of every excise license under which intoxicating liquor may be sold by retail to be consumed off the premises.

Provided that this sub-section shall not apply to any excise license taken out by a spirit dealer or wine dealer for premises which are exclusively used for the sale of intoxicating liquors, or of intoxicating liquors and mineral waters, or other non-intoxicating drinks, and which have no internal communication with the premises of any person who is carrying on any other trade or business.

(2) Notwithstanding anything contained in section eight of the Wine & Beerhouse Act, 1869, and in sections sixty-nine and seventy-four of the Licensing Act, 1872, the licensing justices shall be at liberty in their free and unqualified discretion, except as hereinafter provided, either to refuse a license for the sale of beer, wine, spirits, liqueurs, sweets, or cider, by retail, to be consumed off the premises

on any grounds appearing to them sufficient, or to grant a license to such persons as they deem fit and proper.

(3) Any application for the grant of a license, to which this section applies, in respect of any premises on which the applicant was, at the commencement of this Act, authorised to sell beer, wine, spirits, liqueurs, sweets, or cider by retail to be consumed off the premises, shall be deemed to be an application for the renewal of a license, and shall be subject to the provisions of the Licensing Acts relating to the renewal of licenses.

(4) Provided that where a license for the sale of wine, spirits, liqueurs, sweets or cider, not to be consumed on the premises, was in force on the twenty-fifth day of June, nineteen hundred and two, an application for the renewal of such license, or of any license granted by way of renewal thereof from time to time, shall not be refused to the person who held such license on the twenty-fifth day of June, nineteen hundred and two, except on one or more of the grounds on which it might have been refused if this Act had not passed, or on the ground that the licensee has sold surreptitiously under such license, or has assisted in concealing or misrepresenting the nature of goods sold under such license, or has in any other way, in the opinion of the licensing justices, been guilty of misconduct in the management of his business under such license.

11.—(1) Where a person is intending to apply for a new license for the sale of intoxicating liquors by retail to be consumed on the premises, he shall, not less than twenty-one days before the annual licensing meeting, deposit with the clerk to the licensing justices a plan of the premises in respect of which the application is to be made.

(2) Any alteration in any licensed premises for the sale by retail of intoxicating liquors to be consumed thereon, which gives increased facilities for drinking, or conceals from observation any part of the premises used for drinking, or which affects the communication between the part of the premises where intoxicating liquor is sold and any other part of the premises, or any street or other public way, shall not be made without the consent of the licensing justices

assembled either at the general annual licensing meeting or at special sessions under section four of the Alehouse Act, 1828, and the licensing justices may, before giving their consent, require plans of the proposed alterations to be deposited with their clerk at such time as they may determine; and if any such alteration is made, save under the order of some lawful authority, without such consent as aforesaid, a court of summary jurisdiction, on complaint, may by order declare the license to be forfeited, or direct that, within a time fixed by the order, the premises shall be restored to their original condition.

(3) Where a license is forfeited under this section, the owner of the premises shall have all the rights conferred on owners by section fifteen of the Licensing Act, 1874.

(4) On any application for the renewal of a license for the sale by retail of intoxicating liquors to be consumed on the premises, the licensing justices may require a plan of the premises to be produced before them, and to be deposited with their clerk, and on renewing any such license they may, by order, direct that, within a time fixed by the order, such alterations as they think reasonably necessary to secure the proper conduct of the business shall be made in that part of the premises where intoxicating liquor is sold or consumed, but any such order shall be subject to an appeal to a court of quarter sessions as provided by the Alehouse Act, 1828, and if any such order for structural alteration is made and complied with, no further requisition for the structural alteration of the premises shall be made within the next five years. If the licensed person makes default in complying with any such order, he shall, on summary conviction, be liable to a fine not exceeding twenty shillings for every day during which the default continues.

(5) Notice of any order under this section shall be forthwith given by the clerk to the owner of the premises in respect of which the order is made.

12.—A justice shall not be disqualified to act for any purpose under the Licensing Acts, 1828 to 1886, or this Act, by reason only

of his being interested in a railway company which is a retailer of intoxicating liquor.

13.—No solicitor or other person being a clerk of licensing justices, shall, by himself, his partner, or clerk, as solicitor or agent for any person, conduct or act in any application for or in respect of a license or any other proceedings whatsoever under the Licensing Acts at any licensing or petty sessions held for the district for which he is a clerk, except so far as relates to the preparation of notices or forms, and if any person contravenes this provision he shall be liable on summary conviction to a fine not exceeding one hundred pounds.

14.—(1) The general annual licensing meeting in every licensing district shall be held within the first fourteen days of the month of February in each year, and every adjournment thereof shall be held within one month of the date of the general annual licensing meeting.

(2) The general annual licensing meeting which would, but for this Act, be held between the twentieth day of August and the fourteenth day of September, one thousand nine hundred and two shall not be held.

(3) In every licensing district where the general annual licensing meeting would, but for this Act, be held between the twentieth day of August and the fourteenth day of September, inclusive, all licenses within the meaning of the Licensing Acts, 1828 to 1886, and all billiard licenses granted by the justices of the peace acting in and for any such district which are in force on the tenth day of October, one thousand nine hundred and two, shall, notwithstanding anything in such licenses or in the Licensing Acts, 1828 to 1886, to the contrary, upon production of such license to the clerk of the licensing justices and upon payment to him of half of the fees which would have been payable if that license had been renewed at a general annual licensing meeting held in August or September, one thousand nine hundred and two, be and remain in force until the fifth day of April, nineteen hundred and three, unless previously forfeited, or unless the person to whom or the premises in respect of which the license was granted

is or become disqualified. Upon payment of the said fees, the clerk to the licensing justices shall endorse a note of the payment on the license.

(4) The Commissioners of Inland Revenue may renew any excise license granted to any person holding a license granted by the justices of the peace acting in and for any such licensing district which was in force on the tenth day of October, one thousand nine hundred and two, upon production of that license, in the same manner as if that license had been renewed at a general annual licensing meeting held in August or September, nineteen hundred and two.

(5) The justices of the peace acting in and for any such licensing district shall, on some day within the month of October, nineteen hundred and two, hold a special meeting, and shall at that meeting appoint not less than two nor more than four special sessions to be holden in the division during the period between the date of that meeting and the first day of February, nineteen hundred and three at periods as near as may be equally distant, and at any such special sessions the justices shall have the same powers and jurisdiction as if the said days had been appointed at a general annual licensing meeting in accordance with the provisions of section four of the Alehouse Act, 1828, and the Licensing Act, 1828 to 1886, shall have effect accordingly, and any license granted at any such special sessions shall be in force until the fifth day of April, one thousand nine hundred and three, and no longer.

(6) This section shall not affect the power of the licensing justices under section eleven of the Wine & Beerhouse Act, 1870, to postpone to an adjourned meeting (whether held within one month of the date of the annual meeting or not) the consideration of an application for the grant or renewal of a license, and the said section shall apply to all licenses in like manner as it applies to licenses under the Wine and Beerhouse Acts.

(7) This section shall come into operation on the passing of this Act.

15.—Notwithstanding any enactment to the contrary, it shall not be lawful for a petty sessional court to authorise the sale of intoxicating liquor on any licensed premises until the holding of the next special sessions for the licensing district in which the premises are situate, unless the person making the application has, one week at least before the holding of the court, served on the superintendent of police for the district the like notice as is required in the case of an application for the transfer of a license.

Provided that in any case of urgency the aforesaid notice to the police may be dispensed with if, in the opinion of the court, such notice to the police has been given as is reasonable under the circumstances of the particular case.

16.—(1) In the case of an application for a license under section four or section fourteen of the Alehouse Act, 1828, the person holding the license and the person who it is proposed shall become the holder of the license shall attend at the special sessions at which the application is heard, and the agreement or other assurance, if any, under which the license is to be transferred and held shall be produced to the licensing justices, and, for the purpose of compelling the attendance of any such person, or any witness, the licensing justices shall have all the powers of a court of summary jurisdiction.

Provided that the licensing justices may, for good cause shown in any particular case, dispense with the attendance of either of such persons, or both.

(2) For the purpose of preventing repeated applications the licensing justices may at the general annual licensing meeting make regulations determining the time which must elapse after the hearing of one application for a license under section four or section fourteen of the Alehouse Act, 1828, before another application under the said sections or either of them may be made in respect of the same premises. Provided that the justices may, in their discretion, for good cause shown, dispense with the observance of these regulations in any particular case.

(3) The provisions of sub-section two of section forty of the

Licensing Act, 1872, as to notices of intention to transfer, shall apply to all cases of applications under section four or section fourteen of the Alehouse Act, 1828.

(4) The provisions of sub-section four of section four of the Wine & Beerhouse Act, 1870, with respect to the adjournment of an application for a transfer, shall apply to all licenses in cases arising under section four or section fourteen of the Alehouse Act, 1828; and where any such application is adjourned, and there is in force an authority granted under the Licensing Act, 1842, to sell intoxicating liquor on the licensed premises, such authority shall continue in force till the hearing of the adjourned application, and the proper officer of Inland Revenue may give the like authority by indorsement on the excise license.

17.—(1) An occasional license shall not be granted except with the consent of a petty sessional court, and unless twenty-four hours at least before applying for that consent the applicant has served on the superintendent of police for the district notice of his intention to apply for the consent, setting out his name and address, the place and occasion in respect of which the license is required, the period for which the license is to be in force, and the hours to be specified in the consent of the justices. Provided that where there is no sitting of a petty sessional court within three days before the time when the license is required, and it is shown to the satisfaction of the justices herein-after mentioned that it was not practicable to make an application to a petty sessional court, the consent may be given by any two justices acting for the division and sitting together, of which consent notice shall be sent to the superintendent of police.

(2) In section thirteen of the Revenue Act, 1862, section twenty of the Revenue Act, 1863, section five of the Revenue Act, 1864, and section nineteen of the Licensing Act, 1874, the consent required by this section shall be substituted for the consent in those sections mentioned.

(3) Nothing in this section shall affect the provisions of section twenty-nine of the Licensing Act, 1872, which empower the local authority to extend the hours of closing on special occasions.

18.—In addition to the notices required by the Licensing Acts, 1828 to 1886, to be given by a person intending to apply for a new license, that person shall, twenty-one days at least before the date of the general annual licensing meeting, serve on the clerk of the licensing justices notice of his intention, setting forth his name and address and a description of the license or licenses for which he intends to apply, and of the situation of the premises in respect of which the application is to be made.

19.—(1) An application for the confirmation of the grant of a license shall not be heard until twenty-one days at least have expired since the date of the grant of the license.

(2) A justices' license to sell any intoxicating liquor for consumption only off the premises shall require confirmation in like manner as other licenses.

20.—In every case of appeal against the decision of any licensing justice the court to which such appeal is made shall adjudge and order that the treasurer of the county or place in and for which such justice whose decision is appealed against shall have acted on the occasion when he gave such decision shall pay to such justice such sum as in the opinion of the court shall be sufficient to indemnify such justice from all costs and charges whatsoever to which such justice may have been so put, and which cannot be recovered from any other person, and the said treasurer is hereby authorised to pay the same, which shall be allowed to him in his accounts. The order of the appelate court may be made either at the sessions when the appeal is heard, or at the next ensuing sessions, and the costs may be taxed either in or out of sessions.

21.—From and after the thirty-first day of March one thousand nine hundred and seven, no meeting of justices in petty or special sessions shall be held in premises licensed for the sale of intoxicating liquors, or in any room, whether licensed or not, in any building licensed for the sale of intoxicating liquors; nor shall any coroner's

inquest be held on such licensed premises where other suitable premises have been provided for such inquest.

22.—(1) Notwithstanding anything contained in the Beerhouse Acts, no person, being a keeper of a restaurant or eating-house, shall be disqualified for receiving a license under those Acts by reason only of the premises in respect of which he applies to be licensed not being a dwelling-house or of his not being the real resident holder and occupier thereof.

(2) In this section the expression "the Beerhouse Acts" means the Beerhouse Act, 1834, the Beerhouse Act, 1840, and any enactment amending those Acts.

23.—Notwithstanding any enactment to the contrary, it shall not be necessary for a person holding a canteen under the authority of a Secretary of State or of the Admiralty to obtain a justices' license or certificate to enable him to obtain or hold any excise license for the sale of any intoxicating liquor, and an excise license may be granted to any such person accordingly.

Part III.—Registration of Clubs.

24.—(1) The secretary of every club which occupies a house or part of a house or other premises which are habitually used for the purposes of a club, and in which any intoxicating liquor is supplied to members or their guests, shall cause the club to be registered in manner provided by this Act.

(2) The registration of a club under this Act shall not constitute the club premises licensed premises, or authorise any sale of intoxicating liquor therein which would otherwise be illegal.

25.—(1) The clerk to the justices of every petty sessional division shall keep a register of all such clubs within the division.

(2) The register shall be in a form prescribed by the Secretary of State, and shall contain—

(*a*) the name and objects of the club;

(*b*) the address of the club;

(*c*) the name of the secretary;

(*d*) the number of members;

(*e*) the rules of the club relating to—

(i) the election of members and the admission of temporary and honorary members and of guests;

(ii) the terms of subscription and entrance fee, if any;

(iii) the cessation of membership;

(iv) the hours of opening and closing;

(v) the mode of altering the rules.

(3) The secretary of every such club shall, in the month of January nineteen hundred and three, and in the month of January in each succeeding year, furnish to the clerk to the justices a return, signed by the secretary, giving the above-mentioned particulars, together with a signed statement that there is kept upon the club premises a register of the names and addresses of the club members, and a record of the latest payment of their subscriptions.

(4) Where after the commencement of this Act a new club requiring registration is about to be opened the secretary shall, before the opening of the club, furnish a return, signed by him, to the clerk to the justices giving the above-mentioned particulars.

(5) The clerk to the justices shall keep the register of clubs corrected up to date in accordance with the returns furnished by the secretaries, and the register shall, at all reasonable hours, be open to the inspection of an inspector or superintendent of police, or an officer of the inland revenue, without fee, and of any person on payment of a fee not exceeding one shilling.

(6) A fee of five shillings shall be payable to the clerk to the justices on each return made by the secretary of a club.

(7) In the application of this section to Oxford, the Registrar of the Court of the Chancellor of the University shall be substituted for

the clerk to the justices in the case of any club mainly composed of members past or present of the University.

26.—(1) If any intoxicating liquor is supplied or sold to any member or guest on the premises of an unregistered club, the person supplying or selling such liquor, and every person authorising the supply or sale of such liquor, shall be liable on summary conviction to imprisonment, with or without hard labour, for a term not exceeding one month, or to a fine not exceeding fifty pounds, or to both.

(2) If any intoxicating liquor is kept for supply or sale on the premises of an unregistered club every officer and member of the club shall be liable on summary conviction to a fine not exceeding five pounds, unless he proves to the satisfaction of the court that such liquor was so kept without his knowledge or against his consent.

27.—Intoxicating liquor shall not be supplied in a club for consumption off the premises except to a member on the premises; and if any person supplies or obtains any intoxicating liquor in contravention of the provisions of this section, he shall be liable, on summary conviction, to a fine not exceeding ten pounds.

28.—(1) Where a club has been registered in pursuance of this Act a court of summary jurisdiction on complaint in writing by any person may, if it thinks fit, make an order directing the club to be struck off the register on all or any of the following grounds—namely:—

(*a*) that the club has ceased to exist, or that the number of members is less than twenty-five; or

(*b*) that it is not conducted in good faith as a club, or that it is kept or habitually used for any unlawful purpose; or

(*c*) that there is frequent drunkenness on the club premises; or

(*d*) that illegal sales of intoxicating liquor have taken place on the club premises; or

(*e*) that persons who are not members are habitually admitted to the club merely for the purpose of obtaining intoxicating liquor; or

(*f*) that the club occupies premises in respect of which, within twelve months next preceding the formation of the club, a license has been forfeited or the renewal of a license has been refused, or in respect of which an order has been made that they shall not be used for the purposes of a club; or

(*g*) that persons are habitually admitted as members without an interval of at least forty-eight hours between their nomination and admission; or

(*h*) that the supply of intoxicating liquor to the club is not under the control of the members or the committee appointed by the members.

(2) For the purpose of determining whether a club is conducted in good faith as a club, the court shall have regard to the nature of the premises occupied by the club.

(3) If the court grants a summons on the complaint, the summons shall be served on the Secretary and on such other person, if any, as the court may direct.

(4) Where the court makes an order striking a club off the register the court may, if it thinks fit, by that order further direct that the premises occupied by the club shall not be used for the purposes of any club which requires registration under this Act for a specified period, which may extend to twelve months in case of a first order or in case of a second or subsequent order to five years; provided that any such direction may, for good cause shown, be subsequently cancelled or varied by the court.

(5) In the application of this section to Oxford, the court of summary jurisdiction shall be the Court of the Chancellor of the University sitting and acting under the Oxford University (Justices) Act, 1886, in the case of any club mainly composed of members past or present of the University; provided that that court shall not have power to make an order that premises occupied by any such club shall not be used for the purposes of a club.

29.—(1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for supposing that any registered

club is so managed or carried on as to constitute a ground for striking it off the register, or that any intoxicating liquor is sold or supplied, or kept for sale or supply, on the premises of an unregistered club, he may grant a search warrant to any constable named therein.

(2) A search warrant granted under this section shall authorise the constable named therein to enter the club, if need be by force, and to inspect the premises of the club, to take the names and addresses of any persons found therein, and to seize any books and papers relating to the business of the club.

30.—(1) If the secretary of any registered club or any club which requires to be registered omits to make any return required by this Act he shall be liable on summary conviction to a fine not exceeding twenty pounds, and in the case of a second or subsequent offence to imprisonment, with or without hard labour, for a term not exceeding one month, or to a fine not exceeding fifty pounds, or to both.

(2) If the secretary of any such club knowingly makes a return which is false in any material particular, he shall be liable on summary conviction to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding fifty pounds, or to both.

31.—In the application of this Part of this Act to London, the clerk to a metropolitan police court shall be substituted for the clerk to the justices as regards any place within the jurisdiction of a metropolitan police court, and as regards the City of London the clerk of Special Sessions shall be so substituted.

32.—For the purposes of this Part—

The expression "secretary" includes any officer of a club or other person performing the duties of a secretary, and in the case of a proprietary club where there is no secretary, the proprietor of the club; and

The expression "unregistered club" means a club which requires under this Act to be registered but is not registered, or which has been struck off the register.

Part IV.—Supplemental.

33.—The enactments specified in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

34.—(1) This act may be cited as the Licensing Act, 1902, and may be cited and shall be construed as one with the Licensing Acts, 1828 to 1886.

(2) This Act shall not extend to Scotland or Ireland.

(3) This Act, save as otherwise expressly provided, shall come into operation on the first day of January nineteen hundred and three.

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SCHEDULE.

Sect. 33.] ENACTMENTS REPEALED AS TO ENGLAND.

Session and Chapter.	Short Title.	Extent of Repeal.
9 Geo. 4 c. 61.	The Alehouse Act 1828.	In section one the words from "and such meetings" to "September inclusive." In section three, from "and that every adjournment" to the end of the section. In section thirteen the words "in the counties of Middlesex and Surrey," the words "and elsewhere from the tenth day of October," and the word "respectively." In section fourteen the words "or the tenth day of October," and the words "as the case may be."
35 & 36 Vict. c. 94.	The Licensing Act 1872.	Section thirty. Paragraphs (1) and (2) of section thirty-one. Sections thirty-three and thirty-four. In section forty-eight the words "but in the latter case there shall be endorsed on such copy all convictions made within the previous five years which are endorsed on the old license." Sections fifty-five and fifty-seven. In section fifty-eight the words "every endorsement upon a license, and," and the words "endorsement and."
37 & 38 Vict. c. 49.	The Licensing Act 1874.	Section thirteen. Section fourteen, from "and may be directed" to the end of the section. Section twenty-four.
43 Vict. c. 6.	The Beer Dealers Retail Licenses Act, 1880.	The whole Act.
44 & 45 Vict. c. 58.	The Army Act.	Section one hundred and seventy-four.
45 & 46 Vict. c. 34.	The Beer Dealers Retail Licenses Amendment Act, 1882.	The whole Act.

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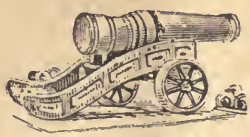
Registered  Trade Mark.

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